

10-23-2012

## State v. Anderson Clerk's Record Dckt. 40222

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Vol. 1 of 4

IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**

---

STATE OF IDAHO,

**LAW CLERK**

**Plaintiff-  
Respondent,**

**-vs-**

**WAYNE ANDERSON  
aka WAYNE D. ANDERSON, II,**

**Defendant-  
Appellant.**

---

Appealed from the District of the Third Judicial District  
for the State of Idaho, in and for Canyon County

Honorable THOMAS J. RYAN, District Judge

---

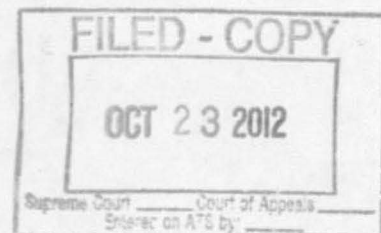
Sara Thomas  
State Appellate Public Defender  
3050 N. Lake Harbor Lane, Ste. 100  
Boise, Idaho 83703

Attorney for Appellant

Lawrence G. Wasden  
Attorney General  
Statehouse  
Boise, Idaho 83720

Attorney for Respondent

---



410222

IN THE SUPREME COURT OF THE  
STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-	)	
Respondent,	)	
	)	Supreme Court No. 40222-2012
-vs-	)	
	)	
WAYNE ANDERSON,	)	
aka WAYNE D. ANDERSON, II,	)	
	)	
Defendant-	)	
Appellant.	)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE, THOMAS J. RYAN, Presiding

Sara Thomas, State Appellate Public Defender, 3050 N. Lake Harbor Lane, Ste. 100,  
Boise, Idaho 83703

Attorney for Appellant

Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

Attorney for Respondent

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Date: 8/20/2012

Time: 04:20 PM

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This Judicial District Court - Canyon County

ROA Report

User: WALDEMER

Case: CR-2011-0031445-C Current Judge: Thomas J Ryan

Defendant: Anderson, Wayne D II

State of Idaho vs. Wayne D Anderson II

Felony

Date		Judge
12/15/2011	New Case Filed-Felony	Thomas J Ryan
	Part I Indictment	Thomas J Ryan
	Part II Indictment	Thomas J Ryan
	Warrant Issued - Arrest Bond amount: 100000.00 Defendant: Anderson, Wayne D II with NCO	Susan E Wiebe
	Case Status Changed: Inactive	Thomas J Ryan
12/16/2011	Hearing Scheduled (Arraignment (In Custody) 12/16/2011 01:30 PM)	Frank P. Kotyk
	Warrant Returned Defendant: Anderson, Wayne D II	Thomas J Ryan
	Case Status Changed: Pending	Thomas J Ryan
	Hearing result for Arraignment (In Custody) scheduled on 12/16/2011 01:30 PM: Hearing Held	Frank P. Kotyk
	Hearing result for Arraignment (In Custody) scheduled on 12/16/2011 01:30 PM: Arraignment / First Appearance	Frank P. Kotyk
	Hearing result for Arraignment (In Custody) scheduled on 12/16/2011 01:30 PM: Constitutional Rights Warning	Frank P. Kotyk
	Hearing result for Arraignment (In Custody) scheduled on 12/16/2011 01:30 PM: Order Appointing Public Defender	Frank P. Kotyk
	Hearing result for Arraignment (In Custody) scheduled on 12/16/2011 01:30 PM: No Contact Order	Frank P. Kotyk
	Hearing Scheduled (Arrn. - District Court 12/23/2011 09:00 AM)	Renae J. Hoff
12/20/2011	Motion to consolidate(w/order) / NOHR	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 01/04/2012 01:30 PM) Motion to consolidate / CR11-21657	Thomas J Ryan
12/23/2011	Hearing result for Arrn. - District Court scheduled on 12/23/2011 09:00 AM: District Court Hearing Held Court Reporter: Carole Bull Number of Transcript Pages for this hearing estimated: Less than 100	Renae J. Hoff
	Hearing result for Arrn. - District Court scheduled on 12/23/2011 09:00 AM: Arraignment / First Appearance	Renae J. Hoff
	Hearing result for Arrn. - District Court scheduled on 12/23/2011 09:00 AM: Appear & Plead Not Guilty	Renae J. Hoff
	Hearing result for Arrn. - District Court scheduled on 12/23/2011 09:00 AM: Notice Of Hearing	Renae J. Hoff
	Hearing Scheduled (Pre Trial 02/21/2012 01:30 PM)	Thomas J Ryan
	Hearing Scheduled (Jury Trial 03/20/2012 09:00 AM)	James C. Morfitt
12/27/2011	Motion for order to produce Grand Jury Transcript	Thomas J Ryan
12/30/2011	States Proposed Jury Instructions	Thomas J Ryan
	Witness List exhibit list and notice of intent	Thomas J Ryan
1/3/2012	Order to produce grand jury transcripts	Thomas J Ryan
1/4/2012	Hearing result for Jury Trial scheduled on 03/20/2012 09:00 AM: Vacated STNW	James C. Morfitt
	Hearing result for Pre Trial scheduled on 02/21/2012 01:30 PM: Vacated	Thomas J Ryan

000001



## Felony

Date		Judge
1/4/2012	Hearing result for Motion Hearing scheduled on 01/04/2012 01:30 PM: Hearing Held Motion to consolidate / CR11-21657	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 01/04/2012 01:30 PM: Motion Granted Motion to consolidate / CR11-21657	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 01/04/2012 01:30 PM: Consolidation Of Files - with CR2011-21657-C	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 01/04/2012 01:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Hearing Scheduled (Pre Trial 01/31/2012 01:30 PM)	Thomas J Ryan
	Hearing Scheduled (Jury Trial 02/14/2012 09:00 AM) stw	James C. Morfitt
1/6/2012	Notice Of Hearing	Thomas J Ryan
	Notice Of Hearing	Thomas J Ryan
	Hearing Scheduled (Motion Hearing 01/20/2012 01:30 PM) notice of intent rule 404(b)	Thomas J Ryan
1/17/2012	Notice Of Hearing	Thomas J Ryan
1/20/2012	Hearing result for Motion Hearing scheduled on 01/20/2012 01:30 PM: Hearing Held notice of intent rule 404(b) - under advisement	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 01/20/2012 01:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
1/27/2012	Def's Specific Request For Discovery	Thomas J Ryan
1/31/2012	Hearing result for Pre Trial scheduled on 01/31/2012 01:30 PM: Hearing Held	Thomas J Ryan
	Hearing result for Pre Trial scheduled on 01/31/2012 01:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Hearing Scheduled (Conference - Status 02/10/2012 01:30 PM) D's Motn in Limine	James C. Morfitt
	Def Amended Specific Request For Discovery	Thomas J Ryan
	Notice Of Hearing	Thomas J Ryan
	PA's 10th Supplemental Response to Request for Discovery	Thomas J Ryan
2/1/2012	Def's Motion in Limine	Thomas J Ryan
	Notice Of Hearing	Thomas J Ryan
2/7/2012	PA's 11th Supplemental Response to Request for Discovery	Thomas J Ryan
	Pa's Response to specific Request For Discovery	Thomas J Ryan
	Motion in limine and notice of hearing	Thomas J Ryan
2/8/2012	Transcript Filed (Grand Jury)	Thomas J Ryan
	Document sealed	
2/9/2012	Notice of intent	Thomas J Ryan

000002

## Felony

Date		Judge
2/9/2012	Motion to shorten time for hearing (w/order) / NOHR	Thomas J Ryan
2/10/2012	Memorandum decision re:404(b) and 609 evidence	Thomas J Ryan
	Hearing result for Conference - Status scheduled on 02/10/2012 01:30 PM: James C. Morfitt	
	District Court Hearing Held	
	Court Reporter: Debora Kreidler	
	Number of Transcript Pages for this hearing estimated: less than 100 pages D's Motn in Limine	
	motion to shorten time for hearing	
	Hearing result for Conference - Status scheduled on 02/10/2012 01:30 PM: James C. Morfitt	
	Hearing Held D's Motn in Limine	
	motion to shorten time for hearing	
	Hearing result for Conference - Status scheduled on 02/10/2012 01:30 PM: James C. Morfitt	
	Motion Held D's Motn in Limine	
	motion to shorten time for hearing	
	Hearing result for Conference - Status scheduled on 02/10/2012 01:30 PM: James C. Morfitt	
	motion to shorten time for hearing	
	Hearing result for Conference - Status scheduled on 02/10/2012 01:30 PM: James C. Morfitt	
	Motion Denied D's Motn in Limine	
2/13/2012	Amended Witness List,Exhibit list and notice of intent	Thomas J Ryan
2/14/2012	Hearing result for Jury Trial scheduled on 02/14/2012 09:00 AM: District Court Hearing Held	James C. Morfitt
	Court Reporter:Debra kreidler	
	Number of Transcript Pages for this hearing estimated: less than 100 page: Def & counsel to be present at 8:30 a.m.	
	Hearing Scheduled (Sentencing 04/16/2012 02:30 PM) Count 2 Part 1&2 to be dismissed	Thomas J Ryan
	Change Plea To Guilty Before H/t	James C. Morfitt
	Pre-Sentence Investigation Evaluation Ordered	James C. Morfitt
	Order to shorten time	James C. Morfitt
	Order to consolidate	James C. Morfitt
	Guilty Plea Advisory Form	Thomas J Ryan
3/29/2012	Motion To Withdraw Guilty Plea	Thomas J Ryan
4/2/2012	Hearing Scheduled (Motion Hearing 04/09/2012 10:30 AM) Motion to Withdraw3 Guilty Plea	Thomas J Ryan
4/9/2012	Affidavit of defendant in support of motion to withdraw guilty plea	Thomas J Ryan
	Hearing result for Sentencing scheduled on 04/16/2012 02:30 PM: Hearing Vacated to be dismissed	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 04/09/2012 10:30 AM: Continued Motion to Withdraw3 Guilty Plea	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 04/09/2012 10:30 AM: District Court Hearing Held	Thomas J Ryan
	Court Reporter: Christine Rhodes - Tucker & Associates	
	Number of Transcript Pages for this hearing estimated: less than 100	

Date: 8/20/2012

Time: 04:20 PM

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This Judicial District Court - Canyon County

User: WALDEMER

ROA Report

Case: CR-2011-0031445-C Current Judge: Thomas J Ryan

Defendant: Anderson, Wayne D II

State of Idaho vs. Wayne D Anderson II

Felony

Date		Judge
4/9/2012	Hearing Scheduled (Motion Hearing 04/16/2012 02:30 PM) to withdraw guilty pleas	Thomas J Ryan
	Hearing Scheduled (Sentencing 04/30/2012 02:45 PM) 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
4/16/2012	Hearing result for Motion Hearing scheduled on 04/16/2012 02:30 PM: Hearing Held to withdraw guilty pleas - under advisment	Thomas J Ryan
	Hearing result for Motion Hearing scheduled on 04/16/2012 02:30 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
4/18/2012	Memorandum Decision Upon Defendant's Motion To Withdraw Guilty Plea : DENIED	Thomas J Ryan
4/27/2012	Notice to court regarding defendant's pre-sentence investigation report	Thomas J Ryan
4/30/2012	Hearing result for Sentencing scheduled on 04/30/2012 02:45 PM: Continued 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
	Hearing result for Sentencing scheduled on 04/30/2012 02:45 PM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100	Thomas J Ryan
	Hearing Scheduled (Sentencing 06/15/2012 01:30 PM) 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
6/8/2012	Hearing Scheduled (Sentencing 07/17/2012 10:15 AM) 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
6/11/2012	Amended Notice Of sentencing Hearing	Thomas J Ryan
7/5/2012	Hearing Scheduled (Sentencing 07/16/2012 11:00 AM) 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
7/6/2012	Amended Notice of Sentencing Hearing	Thomas J Ryan
7/12/2012	Motion to reconsider order denying withdrawal of guilty plea	Thomas J Ryan
7/16/2012	Hearing result for Sentencing scheduled on 07/16/2012 11:00 AM: Hearing Held 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
	Hearing result for Sentencing scheduled on 07/16/2012 11:00 AM: Final Judgement, Order Or Decree Entered 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
	Hearing result for Sentencing scheduled on 07/16/2012 11:00 AM: Sentenced To Fine And Incarceration 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
	Hearing result for Sentencing scheduled on 07/16/2012 11:00 AM: Commitment - Held To Answer 1 hr - count I & III PSI only - declined pyschosexual	Thomas J Ryan
	Hearing result for Sentencing scheduled on 07/16/2012 11:00 AM: Notice to defendant upon sentencing	Thomas J Ryan
	Case Status Changed: closed pending clerk action	Thomas J Ryan
	Civil Penalty Ordered to Victim (I.C.S. 19-5307) - \$5,000.00	Thomas J Ryan

000004

Date: 8/20/2012

Time: 04:20 PM

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Third Judicial District Court - Canyon County

ROA Report

User: WALDEMER

Case: CR-2011-0031445-C Current Judge: Thomas J Ryan

Defendant: Anderson, Wayne D II

State of Idaho vs. Wayne D Anderson II

Felony

Date		Judge
7/16/2012	District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100 Order to dismiss count II	Thomas J Ryan Thomas J Ryan
7/18/2012	Order Rescinding No Contact Order	Thomas J Ryan
7/19/2012	Judgment and commitment	Thomas J Ryan
7/31/2012	Notice of appeal Appealed To The Supreme Court Motion for appointment of state appellate public defender	Thomas J Ryan Thomas J Ryan Thomas J Ryan
8/14/2012	Order appointing State Appellate PD	Thomas J Ryan

000005

FILED  
A.M. P.M.

DEC 15 2011

CANYON COUNTY CLERK  
B RAYNE, DEPUTY

dm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

WAYNE ANDERSON  
DOB [REDACTED]

Defendant.

CASE NO. CR2011- 31445-C

**PART I INDICTMENT**

for the crime of:

**COUNT I-PART I: LEWD CONDUCT WITH A  
MINOR UNDER SIXTEEN**

Felony, Idaho Code Section 18-1508

**COUNT II-PART I: SEXUAL ABUSE OF A  
CHILD UNDER THE AGE OF SIXTEEN  
YEARS**

Felony, Idaho Code Section 18-1506

WAYNE ANDERSON is accused by the Grand Jury of Canyon County of the crimes of  
LEWD CONDUCT WITH A MINOR UNDER SIXTEEN, a felony, Idaho Code Section 18-  
1508, and SEXUAL ABUSE OF A CHILD UNDER THE AGE OF SIXTEEN YEARS, a  
felony, Idaho Code Section 18-1506, committed as follows:

**COUNT I-PART I**

That the Defendant, Wayne Anderson, on or between August 7, 2007 and August  
7, 2010, in the County of Canyon, State of Idaho, did, wilfully and lewdly, commit a lewd and/or

PART I INDICTMENT

1

000006

lascivious act upon and/or with the body of a minor DA (dob [REDACTED]), under the age of sixteen years, to-wit: of the ages of thirteen (13) to fifteen (15) years of age by having manual to genital contact with the intent to arouse, appeal to and/or gratify the lust, passion and/or sexual desire of the Defendant and/or said minor child.

All of which is contrary to Idaho Code Section 18-1508 and against the power, peace and dignity of the State of Idaho.

### COUNT II-PART I

That the Defendant, Wayne Anderson, over the age of eighteen, to-wit: thirty-eight (38) to forty (40) years of age, on or between August 7, 2007 and August 7, 2010, in the County of Canyon, State of Idaho, did have sexual contact with DA (dob [REDACTED]), a child under the age of sixteen, to-wit: thirteen (13) to fifteen (15) years by having manual to breast contact and/or did solicit DA to engage in a sexual act, with the intent to gratify the lust, passions and/or sexual desire of the Defendant, the child and/or a third party.

All of which is contrary to Idaho Code Section 18-1506 and against the power, peace and dignity of the State of Idaho.

A TRUE BILL

Presented in Open Court this 14 day of December, 2011.

*E. Elizabeth Walters*  
Foreman of the Grand Jury of  
Canyon County, State of Idaho

NAMES OF WITNESSES EXAMINED BEFORE THE GRAND JURY

DA  
DET BRICE KING, NPD

dm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

FILED  
A.M. P.M.

DEC 15 2011

CANYON COUNTY CLERK  
B RAYNE, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

WAYNE ANDERSON  
DOB: [REDACTED]

Defendant.

CASE NO. CR2011- 31445

**PART II INDICTMENT**  
for the crime of:

**COUNT I-PART II: MANDATORY MINIMUM  
SENTENCING**

Felony, IC 19-2520G(2)

**COUNT II-PART II: MANDATORY MINIMUM  
SENTENCING**

Felony, IC 19-2520G(2)

WAYNE ANDERSON is accused by the Grand Jury of Canyon County of the crime of  
MANDATORY MINIMUM SENTENCING (2 COUNTS), a felony, Idaho Code Section 19-  
2520G(2), committed as follows:

**COUNT I - PART II**

That the Defendant, WAYNE ANDERSON, on or about September 24, 1998,  
was convicted of Lewd Conduct With A Minor Under Sixteen in Bear Lake County, Idaho, and  
is required to register as a sex offender pursuant to Idaho Code Section 18-8304.

PART II INDICTMENT

All of which is contrary to Idaho Code Section 19-2520G(2) and against the power, peace and dignity of the State of Idaho.

**COUNT II - PART II**

That the Defendant, WAYNE ANDERSON, on or about September 24, 1998, was convicted of Lewd Conduct With A Minor Under Sixteen in Bear Lake County, Idaho, and is required to register as a sex offender pursuant to Idaho Code Section 18-8304.

All of which is contrary to Idaho Code Section 19-2520G(2) and against the power, peace and dignity of the State of Idaho.

A TRUE BILL

Presented in Open Court this 14 day of December, 2011.

Eugene M. Kallen signed in the above  
Foreman of the Grand Jury of  
Canyon County, State of Idaho

NAMES OF WITNESSES EXAMINED BEFORE THE GRAND JURY

DA  
DET BRICE KING, NPD



dm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

FILED  
A.M. 10:00 P.M.

DEC 16 2011

CANYON COUNTY CLERK  
M FRANCO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

WAYNE ANDERSON,

Defendant.

CASE NO.

CR 11-31445-C

WARRANT OF ARREST

TO ANY SHERIFF, CONSTABLE, MARSHAL, OR POLICEMAN  
IN THE STATE OF IDAHO:

AN INDICTMENT having been found on the 14<sup>th</sup> day of December, 2011, in the  
District Court of the Third Judicial District, in and for the County of Canyon, State of Idaho,  
charging WAYNE ANDERSON with the crimes of PART I: SEXUAL BATTERY OF A  
MINOR CHILD SIXTEEN OR SEVENTEEN YEARS OF AGE, a felony, Idaho Code Section  
18-1508A, SEXUAL ABUSE OF A CHILD UNDER THE AGE OF SIXTEEN YEARS, a  
felony, Idaho Code Section 18-1506, and PART II: MANDATORY MINIMUM  
SENTENCING, a felony, Idaho Code Section 19-2520G(2);

WARRANT OF ARREST

1

DOCKETED

000010

YOU ARE THEREFORE COMMANDED to immediately arrest the Defendant above named and to bring him\her before the District Court in the County of Canyon, or in case of my absence or inability to act before the nearest or most accessible District Judge in Canyon County.

May be served:

\_\_\_\_\_ Daytime only

X \_\_\_\_\_ Daytime or night time

Bond: \$ 100,000

### NO CONTACT ORDER

X If checked, Defendant is not to be released on bond until the following No Contact Order is served on, or signed by, the Defendant:

As a condition of Bond, YOU, THE DEFENDANT IN THE ABOVE CAPTIONED CASE, ARE HEREBY ORDERED TO HAVE NO CONTACT DIRECTLY OR INDIRECTLY WITH THE ALLEGED VICTIM(S):

DA DOB 8/7/94 \_\_\_\_\_

All minors \_\_\_\_\_

You shall not harass, follow, contact, attempt to contact, communicate with in any form, or knowingly remain within 300 feet of the alleged victim(s) or his/her property, residence, work or school.

THIS ORDER WILL EXPIRE AT 11:59 ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, OR UPON DISMISSAL OF THE CASE.

VIOLATION OF THIS ORDER MAY BE PROSECUTED AS A SEPARATE CRIME UNDER Idaho Code section 18-920 for which no bail will be set until you appear before a judge and is subject to a penalty of up to one (1) year in jail or up to a one thousand dollar (\$1,000) fine, or both.

THIS ORDER CAN BE MODIFIED ONLY BY A JUDGE AND WHEN MORE THAN ONE DOMESTIC VIOLENCE PROTECTION ORDER (Title 39, Chapter 62 of Idaho Code) IS IN PLACE THE MOST RESTRICTIVE PROVISION WILL CONTROL ANY CONFLICTING TERMS OF ANY OTHER CIVIL OR CRIMINAL PROTECTION ORDER.

The clerk shall immediately give written notification to the records department of the Canyon County Sheriff's Office of the issuance of this order. THIS INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM. This order is entered pursuant to Idaho Code section 18-920, and Idaho Criminal Rule 46.2 (for felonies) or Idaho Misdemeanor Criminal Rule 13 (for misdemeanors).

DATED this 14<sup>th</sup> day of December, 2011.

  
DISTRICT JUDGE

RACE: WAM	HAIR: GRAY	EYES: HAZEL
HEIGHT: 6'3"	WEIGHT: 220	DOB: [REDACTED]
SS#: [REDACTED]	CR#: N11-28524	AGENCY: NPD
Officer: King	Badge #:	

Last Known address: 411 18th Ave. S., Nampa, Idaho

NCIC ENTRY: (Additional Levels Inclusive)

☐ Local  
☐ Statewide  
☐ Surrounding States  
☐ Western United States  
☐ Nationwide

By: \_\_\_\_\_

Dated: \_\_\_\_\_

### RETURN OF SERVICE

I CERTIFY that I served the foregoing Warrant by arresting the above named Defendant and bringing into Court his \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Deputy Sheriff/City Policeman/  
State Policeman

The clerk shall immediately give written notification to the records department of the Canyon County Sheriff's Office of the issuance of this order. THIS INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM. This order is entered pursuant to Idaho Code section 18-920, and Idaho Criminal Rule 46.2 (for felonies) or Idaho Misdemeanor Criminal Rule 13 (for misdemeanors).

DATED this 14 day of Dec, 2011.

**JUDGE**  
**SUSAN E. WIEBE**  
DISTRICT JUDGE

RACE: WAM	HAIR: GRAY	EYES: HAZEL
HEIGHT: 6'3"	WEIGHT: 220	DOB: [REDACTED]
SS#: [REDACTED]	CR#: N11-28524	AGENCY: NPD
Officer: King	Badge #:	

Last Known address: 411 18th Ave. S., Nampa, Idaho

NCIC ENTRY: (Additional Levels Inclusive)

☐ Local  
☐ Statewide  
☐ Surrounding States  
☐ Western United States  
☐ Nationwide

By: \_\_\_\_\_

Dated: \_\_\_\_\_

#### RETURN OF SERVICE

I CERTIFY that I served the foregoing Warrant by arresting the above named Defendant and bringing into Court his 14<sup>th</sup> day of December, 2011.

5264  
Deputy Sheriff/City Policeman/  
State Policeman

ANDREW KEEHL  
CLSO

WARRANT OF ARREST

3

000013

THIRD JUDICIAL DISTRICT, STATE OF IDAHO  
COUNTY OF CANYON

☒ **ARRAIGNMENT**    ☒ **IN-CUSTODY**    ☐ **SENTENCING / CHANGE OF PLEA**

STATE OF IDAHO,

Plaintiff

-vs-

**WAYNE D. ANDERSON,**

Defendant.

☐ True Name

Corrected Name:

) Case No. **CR-11-31445-C**

) Date: 12/16/11

) Judge: KOTYK

) Recording: MAG 7I (220-224)

**APPEARANCES:**

☒ Defendant  
☐ Defendant's Attorney ☐

☒ Prosecutor DAN BLOCKSOM  
☐ Interpreter

**ADVISEMENT OF RIGHTS:** Defendant

- ☒ was informed of the charges against him/her and all legal rights, including the right to be represented by counsel.  
☒ requested court appointed counsel. ☐ waived right to counsel.  
☒ Indigency hearing held. ☐ Court denied court-appointed counsel.  
☒ **Court appointed public defender.**

☒ **District Court Arraignment: 12/23/11 AT 9:00 am before Judge HOFF**

**BAIL:** State recommends

- ☐ Released on written citation promise to appear  
☐ Released on own recognizance (O.R.)  
☐ Released to pre-trial release officer.  
☒ **No Contact Order** ☒ **entered**  
☐ Address Verified

- ☐ Released on bond previously posted.  
☒ **Remanded to the custody of the sheriff.**  
☒ **Bail set at \$100,000 AS SET**  
☐ Consolidated with \_\_\_\_\_  
☐ Corrected Address \_\_\_\_\_

**OTHER:** \_\_\_\_\_

McCartin, Deputy Clerk

THIRD JUDICIAL DISTRICT  
STATE OF IDAHO  
COUNTY OF CANYON

FILED 12/16/11 AT 224p.M.  
CLERK OF THE DISTRICT COURT  
BY McLannan, Deputy

THE STATE OF IDAHO/or

Wayne D Anderson

Case No. CR-11-31445-C

ORDER APPOINTING PUBLIC  
DEFENDER

The Court being fully advised as to the application of the above-named applicant and it appearing to  
be a proper case,

IT IS HEREBY ORDERED that the Canyon County Public Defender be, and hereby is, appointed for

☒ THE MATTER IS SET FOR

DC Antn 12/23/11 9am

before Judge

Hoff

☐ THE MATTER SHALL BE SET FOR

before Judge

Dated:

12/16/11

Signed:

[Signature]  
Judge

☒ In Custody -- Bond \$

☐ Released: ☐ O.R.

☐ on bond previously posted  
to PreTrial Release

100,000 asset

Juvenile: ☐ In Custody  
☐ Released to

☒ No Contact Order entered.

☐ Cases consolidated.

☐ Discovery provided by State.

☐ Interpreter required.

☐ Additional charge of FTA.

Original--Court File

Yellow--Public Defender

Pink--Prosecuting Attorney

ORDER APPOINTING PUBLIC  
DEFENDER

2/06

000015

THIRD JUDICIAL DISTRICT  
STATE OF IDAHO  
COUNTY OF CANYON

FILED 12/16/11 AT 2:30 P.M.  
CLERK OF THE DISTRICT COURT  
BY Millan, Deputy

THE STATE OF IDAHO,

Plaintiff,

-vs-

Wayne Anderson

Defendant.

Citation / Case No. CR-11-31445-C

Arresting Agency \_\_\_\_\_

**NO CONTACT ORDER - Detention**

Defendant has been charged with violating Idaho Code section(s):

- ☐ 18-918 Domestic Assault or Domestic Battery ☐ 39-6312 Violation of a Protection Order  
☐ 18-7905 Stalking (Felony) ☐ 18-7906 Stalking (Misdemeanor) ☐ 18-901 Assault  
☐ 18-903 Battery ☐ 18-905 Aggravated Assault ☐ 18-907 Aggravated Battery  
☒ Other lewd PA dob 8/7/94 ~~PA~~ dob all minors

Alleged Victim's Name \_\_\_\_\_

YOU, THE DEFENDANT, ARE HEREBY ORDERED TO HAVE NO CONTACT DIRECTLY OR INDIRECTLY WITH THE ALLEGED VICTIM. You shall not harass, follow, contact, attempt to contact, communicate with in any form, or knowingly remain within 300 feet of the alleged victim or his/her property, residence, work, or school.

You are further ordered to vacate the premises where the alleged victim resides. You must contact a law enforcement officer who will make arrangements to accompany you to the residence to remove items and tools necessary for employment and personal belongings. The officer will determine what constitutes necessary personal belongings.

VIOLATION OF THIS ORDER IS A SEPARATE CRIME under Idaho Code section 18-920 for which no bail will be set until you appear before a judge and is subject to a penalty of up to one (1) year in jail and up to a one thousand dollar (\$1,000) fine. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars (\$5,000), or by both fine and imprisonment.

THIS ORDER CAN BE MODIFIED ONLY BY A JUDGE AND WILL REMAIN IN EFFECT UNTIL 11:59 P.M. ON 12/16/11 OR DISMISSAL OF THIS CASE.

When more than one (1) DOMESTIC VIOLENCE PROTECTION ORDER IS IN PLACE PURSUANT TO IDAHO'S DOMESTIC VIOLENCE CRIME PREVENTION ACT, (Title 39, Chapter 63 of the Idaho Code), the most restrictive provision will control any conflicting terms of any other civil or criminal protection order; however, entry or dismissal of a civil protection order shall not result in dismissal of this Order.

The Clerk of the Court shall give written notification to the Sheriff's Department in the county in which this Order is issued immediately and THE INFORMATION ON THIS ORDER SHALL BE ENTERED INTO THE IDAHO LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM.

Dated: 12/16/11

Signed: \_\_\_\_\_

Copy handed to Defendant by MLC via jail

Deputy Clerk on 12/16/11

COPY SERVED ON DEFENDANT BY \_\_\_\_\_ DEPUTY SHERIFF(\_\_\_\_\_) on date \_\_\_\_\_ at \_\_\_\_\_ am/pm

Badge # \_\_\_\_\_

☒ White

Court

☒ Yellow

Dispatch

☒ Pink

Defendant

☒ Green

Jail

☒ Orange

PA (Nampa, Caldwell, County)

TIME : 12/16/2011 16:10

DATE, TIME	12/16 16:07
FAX NO./NAME	NCO
DURATION	00:02:52
PAGE(S)	06
RESULT	OK
MODE	STANDARD
	ECM



bm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

**FILED**  
A.M. P.M.

DEC 20 2011

CANYON COUNTY CLERK  
S HILL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II,

Defendant.

CASE NO. CR2011-21657

**MOTION TO CONSOLIDATE,  
AND NOTICE OF HEARING**

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II,

Defendant.

CASE NO. CR2011-31445

**MOTION TO CONSOLIDATE AND NOTICE OF HEARING**

COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney for the  
County of Canyon, State of Idaho, pursuant to Idaho Criminal Rule 8 and moves the Court for an  
order joining the above entitled cases for the purposes of trial. This Motion is based upon the  
following:

MOTION TO  
CONSOLIDATE

<sup>1</sup>  
000018

ORIGINAL

- 1) The actions of all of the Defendants constituted a common scheme or plan.
- 2) It would be in the best interest of judicial economy to have the parties joined for the purposes of trial.
- 3) Joinder would not result in undue prejudice to any of the Defendants.

### NOTICE OF HEARING

Notice is hereby given that a hearing on the Motion filed in the above entitled matter is scheduled for the 4th day of January, 2012, at the hour of 1:30 pm., before the Honorable Thomas J. Ryan.

DATED this 19 day of December, 2011.


  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 19 day of December, 2011, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail

  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **RENAE J. HOFF** DATE: **DECEMBER 23, 2011**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR-2011-0031445*C
	)	
vs.	)	TIME: 9:00 A.M
	)	
WAYNE ANDERSONN, II,	)	REPORTED BY: Carole Bull
	)	
Defendant.	)	DCRT 3 (903-908)
	)	

This having been the time heretofore set for **arraignment** in the above entitled matter, the State was represented by Ms. Eric Kallin, Deputy Prosecuting Attorney for Canyon County, and the defendant was personally present with counsel, Mr. Aaron Bazzoli.

The Court noted the case, determined the defendant's true and correct name was charged and advised the defendant a two part Indictment had been filed on December 15, 2011.

**Mr. Bazzoli advised the Court the defendant had the opportunity to review the two part Indictment and waived formal reading of the same. Additionally, the defendant would enter pleas of not guilty, deny the sentencing enhancements, request pre-trial and jury trial and demand speedy trial.**

The Court advised the defendant Part I- Count I- of the Indictment charged the felony offense of Lewd Conduct with a Minor Under Sixteen in Count I which carried a maximum possible penalty of up to life in the penitentiary, a fine in the amount of \$50,000.00, potential civil penalty in favor of the victim and if convicted requirement of registration as a sex offender and submission to a DNA sample and right thumbprint impression. Additionally, the same Indictment charged the felony offense of Sexual Abuse of a Child Under the Age of Sixteen Years as charged in Part I-Count II- which carried a maximum possible penalty of up to twenty five (25) years in the penitentiary and a fine in the amount of \$50,000.00, or both. Further, enhancements had been contained in Part II of the Indictment and the Court advised the defendant if he had been found to have committed the crimes as charged in Count I-Part I and Count II-Part I, a jury could hear evidence on the prior convictions and if a jury found the defendant had prior convictions as claimed in the documents, any sentence the defendant may receive on the initial charges could be increased by a mandatory minimum of no less than a fifteen (15) year sentence with no leniency, no probation and no retained jurisdiction or withheld judgment.

In answer to the Court's inquiry, the defendant indicated he understood the nature of the charges as charged in Part I of the Indictment together with the maximum

possible penalties and further understood the sentencing enhancements as alleged in Part II of the Indictment.


**The Court set the matter for pre-trial on February 21, 2012 at 1:30 p.m. before Judge Ryan with jury trial to commence on March 20, 2012 at 9:00 a.m. for three (3) days before Judge Morfitt.**

Ms. Kallin advised the Court there had been an additional case which had been pending and noted a Motion to Consolidate had been noticed up for hearing on January 4, 2012 at 1:30 p.m. before Judge Ryan, recognizing Mr. Sisson had been working with the defendant in connection with his other pending matter.

The Court advised counsel it had noted the second file and had further noted the hearing date which had been scheduled in connection with this matter pursuant to the Motion to Consolidate as filed on December 20, 2011, therefore both cases would proceed before Judge Ryan as noticed.

The Court determined the defendant had an aggregate bond of \$400,000.00 between the two cases with bond set in the sum of \$100,000.00 in connection with this matter.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceedings, or the posting of bond.

  
\_\_\_\_\_  
Deputy Clerk

MARK J. MIMURA  
CANYON COUNTY PUBLIC DEFENDER  
LARY SISSON  
510 Arthur St.  
Caldwell, ID 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

FOL BUD  
A.M. P.M.

DEC 27 2011

CANYON COUNTY CLERK  
M BUSH, DEPUTY

 ORIGINAL

*Attorneys for Defendant*

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

**STATE OF IDAHO,**

Plaintiff,

vs.

**WAYNE D. ANDERSON,**

Defendant.

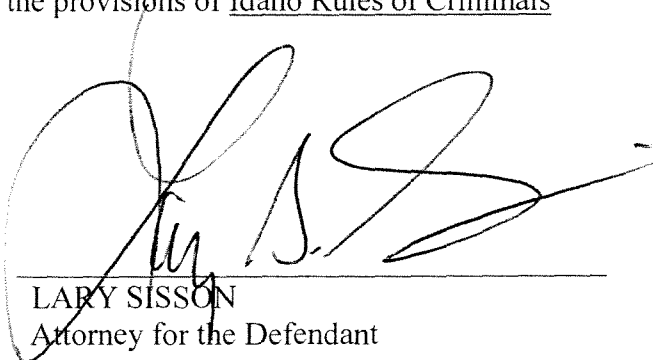
Case No. CR-2011-31445

MOTION FOR ORDER TO PRODUCE  
GRAND JURY TRANSCRIPT

COMES NOW, the above named defendant, WAYNE ANDERSON, by and through his attorney of record, Lary Sisson, the Assistant Canyon County Public Defender, and moves this honorable Court for an Order to produce the record of the Grand Jury Transcript leading to an Indictment of the above named defendant in this matter on December 15th, 2011.

THIS MOTION is made pursuant to the provisions of Idaho Rules of Criminals Procedures 6.3(c).

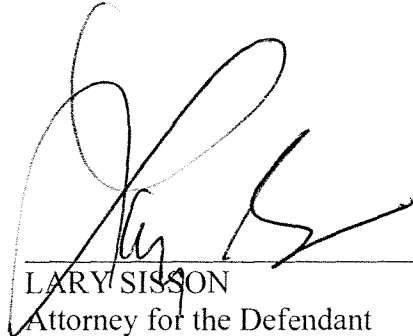
DATED; December 27th, 2011

  
LARY SISSON  
Attorney for the Defendant

## CERTIFICATE OF SERVICE

I hereby certify that, on December 27th, 2011 I served a true and correct copy of the within and foregoing document upon the following: by hand delivering copies of the same to the in box located in the clerk's office on the second floor of the Canyon County Courthouse as indicated below.

Canyon County Prosecuting Attorney  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605



LARRY SISSON  
Attorney for the Defendant

MARK J. MIMURA  
CANYON COUNTY PUBLIC DEFENDER  
LARY Sisson  
510 Arthur Street  
Caldwell ID 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
State Bar No. 6072

 **ORIGINAL**  
FILED  
JAN 03 2012  
A.M. 12:00 P.M.

CANYON COUNTY CLERK  
K GORDILLO, DEPUTY

*Attorneys for the Defendant*

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,	)	
	)	
Plaintiff,	)	CASE NO. CR-2011-31445
vs.	)	
	)	
WAYNE ANDERSON,	)	ORDER TO PRODUCE
	)	GRAND JURY TRANSCRIPT
Defendant,	)	
_____	)	

The above named Defendant having filed a motion for an order to produce the record of the Grand Jury of the above named Defendant, and good cause appearing therefore;

IT IS HEREBY ORDERED AND THIS DOES ORDER a transcript of Grand Jury proceedings on December 15th, 2011, be prepared as soon as possible.

IT IS FURTHER ORDERED:

1. Upon receipt of the transcript, the Court Clerk will lodge and certify delivery of one copy to the Prosecuting Attorney. The Prosecuting Attorney shall have five working days to review the transcript and file any objection to any portion of the transcript or request the redaction of any part of the transcript. If there is an objection, the Court will review the transcript *in camera* and make any necessary deletions and make a record of such deletions and the reasons for the deletions. Such record will be sealed for review by an appellate court.

2. In the absence of a filed objection by the Prosecuting Attorney to the completed transcript within the five working days, the Court Clerk is to file a copy with the Court and certify delivery of a copy of the transcript to the Defendant's attorney.

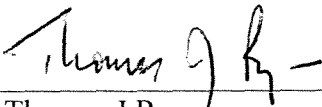


3. The transcript shall be furnished to Defendant's counsel, Lary Sisson as soon as possible but it shall be furnished not later than ten days before trial.

4. Said transcripts shall be paid for at County expense.

IT IS FURTHER ORDERED all such transcripts are to be used exclusively by the said attorney in preparation for the defense of said case. None of the material may be copied or disclosed to any person other than the attorneys, their deputies, assistants, associates or witnesses, without specific authorization by the Court. Counsel may discuss the contents of the transcript with their client or witnesses, but may not release the transcripts themselves.


Dated this 3rd day of <sup>January, 2012.</sup> ~~December, 2011.~~


  
\_\_\_\_\_  
District Thomas J Ryan


**CERTIFICATE OF SERVICE**

I certify that on 3rd day of Jan, 2012, I served a true and correct copy of the within and foregoing Order for Grand Jury Transcript upon the following individual(s) named below in the manner noted:

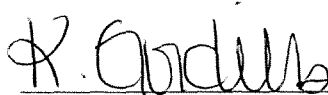
- ✓ By hand delivering copies of the same to the office(s) indicated below.

 Canyon County Prosecuting Attorney  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605

 Canyon County Public Defender  
510 Arthur St.  
Caldwell, ID 83605

 Theresa Randall  
Transcript Clerk  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605

Clerk of the Court  
CHRIS YAMAOTO



By: Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **JANUARY 4, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR2011-21647-C
	)	CR2011-31445-C
	)	
vs.	)	TIME: 1:30 P.M.
	)	
WAYNE D. ANDERSON, II,	)	<b>DCRT4 (137-146)</b>
	)	
Defendant.	)	REPORTED BY: Kim Saunders
	)	

---

This having been the time heretofore set for **motion hearing** in the above-entitled matters, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was not present in court and represented by Mr. Lary Sisson.

In answer to the Court's inquiry, Ms. Kallin indicated there was a pending motion to consolidate. Further, the State intended to amend CR2011-21647-C to a reduced charge of **Sexual Abuse of a Child Under the Age of Sixteen**, to which the defense has no objection. Additionally, based upon an e-mail received from defense counsel, the defendant would not be opposing the motion to consolidate.

Ms. Kallin presented the Amended Information to the Court.

In answer to the Court's inquiry, Ms. Kallin indicated the State would be maintaining Part II of the sentencing enhancement and there was a Part II in the other case as well.

Mr. Sisson indicated the defendant would be stipulating to the probable cause for the amended charge and to the filing thereof.

The Court advised the defendant the amended charge of **Sexual Abuse of a Child Under the Age of Sixteen** carried up to twenty-five (25) years in the state penitentiary with the enhancement in Part II requiring a mandatory minimum sentence of fifteen (15) years in the state penitentiary.

The defendant indicated he understood the charge and the possible penalties.

In answer to the Court's inquiry, Mr. Sisson requested a countenance of the jury trial to sometime in February for a two (2) day setting.

After discussion with counsel, the Court set this matter for a **2 day jury trial commencing on the 14<sup>th</sup> day of February, 2012 at 9:00 a.m. before Judge Morfitt** and for a **pre-trial conference on the 31<sup>st</sup> day of January, 2012 at 1:30 p.m. before this Court.**

The Court examined the defendant as to speedy trial in **CR2011-21657-C** and **determined those rights were waived.**

The Court ordered the two (2) cases consolidated.

Ms. Kallin advised the Court the State had filed a 404(b) notice and inquired if the Court wished to address that matter at the pre-trial.

The Court clarified with Ms. Kallin the 404(b) information she was seeking to introduce at trial.

Ms. Kallin agreed she wanted to introduce all lewd conduct with the named victims as well as the conduct in the prior conviction in which the victim was the sister of the two (2) victims in this case. Therefore, she believed a hearing would be needed as to the prior victim.

The Court agreed and requested she contact the Court's secretary for a hearing date.

In answer to the Court's inquiry, Ms. Kallin indicated that case was from 1998.

In answer to Ms. Kallin's inquiry, the Court requested the State motion pursuant to 609 be set for the same day.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceedings or posting of bond.

---

  
\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **JANUARY 20, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR2011-21657-C
	)	CR2011-31445-C
	)	
vs.	)	TIME: 1:30 P.M.
	)	
WAYNE ANDERSON,	)	<b>DCRT4 (131-206)</b>
	)	
Defendant.	)	REPORTED BY: Kim Saunders
<hr/>		

This having been the time heretofore set for **motion hearing** in the above-entitled matter, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present in court and represented by Mr. Lary Sisson.

The Court called the case and noted this matter was set for hearing on the State's motion on 404(b) evidence. Further, the State was also requesting the Court consider the same or similar evidence under Rule 609.

The Court reviewed the allegations regarding the prior convictions and inquired whether she was seeking evidence beyond the conviction.

Ms. Kallin indicated she would be seeking additional evidence and presented argument in support of the motion.

Mr. Sisson indicated the defense would be objecting in the evidence was outside the timeframe charged in the Indictments.

The Court confirmed Mr. Sisson was conceding the incidents with the charged victims during the timeframe charged.

In answer to the Court's inquiry, Ms. Kallin agreed a unanimity instruction should be given to the jury.

The Court encouraged defense counsel to review the special verdict form contained in *State vs. Ornelas* and inquired of counsel in aid of clarification.

Ms. Kallin addressed the Court's concerns and presented further argument.

Mr. Sisson objected and presented argument.

The Court inquired in aid of clarification.

Ms. Kallin addressed the Court's concerns.

Mr. Sisson presented further argument.

Ms. Kallin presented further argument.

Mr. Sisson presented further argument.

Ms. Kallin presented further argument.

Mr. Sisson presented further argument.

The Court inquired in aid of clarification.

Mr. Sisson addressed the Court's concerns and presented additional argument.

Ms. Kallin indicated she referred to the Idaho Department of Correction's website and believed the later date she obtained was probably the date the defendant was released from parole.

The Court determined both parties believed three (3) days would be adequate time for trying this matter.

The Court granted the State additional time to research the defendant's correct release date from incarceration.

Mr. Sisson presented argument in objection to the evidence under Rule 609.

Ms. Kallin presented argument in support of the motion.

The Court indicated it would be issuing a written opinion. However, preliminarily, it was the Court's opinion that all incidents within the timeframe set forth in the Indictment relating to the charge victims were admissible under 404(b), subject to a unanimity instruction in a special verdict form. Regarding testimony of the prior victim as it related to 404(b), the Court no problem finding the testimony was true because there was the prior conviction. Whether or not it was propensity versus common scheme or plan or lack of mistake, the Court tended to agree with the defendant that it might only be admissible in rebuttal if the defendant brought up the matter in his testimony. However, the State pointed out that in the event there was a challenge to any of the victim witnesses in case in their examination that opened the door to those issues, the Court believed that information could be brought into the State's case in chief.

The Court wished to better articulate its thoughts in writing. It requested the State provided it with the police reports and so forth relating to the 1998 case.

There being no objection from Mr. Sisson, Ms. Kallin provided the Court with those copies.



The Court requested both parties look at the issue of how to measure the ten (10) year period, to the arrest date or to the trial date, assuming the release date was in December, 2011. The Court requested legal support as to how calculate that time period if possible.

Assuming there was no issue of the timeframe being in excess of ten (10) years, the Court indicated that should the defendant take the stand, it is appropriately admitted and cited additional cases to counsel on the same issue of prior convictions admitted at trial.

The Court took the matter under advisement and instructed the parties to submit any legal authority on how to calculate the ten (10) year period within the next ten (10) days. Further, the Court wished to know whether Ms. Kallin with stipulate and agree the defendant's date of release was the 26<sup>th</sup> day of December, 2001.

Neither counsel had anything further for the Court to address.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceedings or posting of bond.

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\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **JANUARY 31, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR2011-21657-C
	)	CR2011-31445-C
	)	
vs.	)	TIME: 1:30 P.M.
	)	
WAYNE ANDERSON,	)	<b>DCRT4 (122-138)</b>
	)	
Defendant.	)	REPORTED BY: Kim Saunders
	)	

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This having been the time heretofore set for **pre-trial conference** in the above-entitled matters, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present in court and represented by Mr. Lary Sisson.

The Court called the case, reviewed prior proceedings, and noted the parties had until today to file supplemental briefing and, to date, none had been received.

Ms. Kallin indicated she was unable to locate any case law, one way or the other. However, she had contacts Idaho Department of Correction as was advised the defendant had been released on the 26<sup>th</sup> day of December, 2001. Then he was placed

back in custody on a parole violation in May of 2005. Therefore, Ms. Kallin believed the information fell within the ten (10) year timeframe.

Mr. Sisson objected and presented argument.

The Court inquired in aid of clarification.

Mr. Sisson addressed the Court's concerns.

The Court inquired in aid of clarification.

Mr. Sisson addressed the Court's concerns.

The Court instructed Mr. Sisson to establish his case via affidavit.

Ms. Kallin presented further argument.

The Court indicated it had been working on its written decision on all elements and would have that decision filed by the first of next week. The issue presented today, may require some consideration. However, the Court requested its written decision be filed first, before the defense took any additional steps.

Mr. Sisson advised the Court he had filed a specific request for discovery on Friday which he had subsequently amended and explained what information he was seeking.

The Court reviewed the request in the file and indicated the amended request had not made it to the Court's file.

Ms. Kallin indicated it was likely she would be objecting to release of any of the victim's journals, if they existed, and presented argument.

Mr. Sisson explained his reasoning for requesting this information.

The Court indicated this matter was not properly before the Court.

Mr. Sisson indicated the State had disclosed a potential expert witness. He has drawn up a motion in limine to prevent her testimony and indicated he needed a court date for that hearing.

The Court explained it had no time in its calendar and instructed Mr. Sisson to motion the matter up, and it might have to be considered right before trial.

Mr. Sisson indicated the witness in question had testified in the Watkins trial and the court reporter had indicated pulling up that testimony would be fairly easy. Mr. Sisson requested a copy of that testimony be made available to him for possible impeachment purposes.

Ms. Kallin advised the Court the witness had testified in the Watkins case in her capacity as an investigator with Health and Welfare. Since then, the witness had furthered her education and was now a licensed counselor, counseling children of sexual abuse. It was her recollection that the witness had not given any testimony regarding expert opinions about victimology. Ms. Kallin agreed the witness was disclosed as an expert witness for the purposes of this trial.

The Court indicated that since the defendant had been declared indigent, defense counsel was entitled to a copy of the relevant portion of that transcript and instructed counsel to submit an appropriate order.

In answer to Ms. Kallin's inquiry, the Court indicated it would talk with Judge Morfitt to obtain a status conference date and suggested that would also be a good time to hear the motion in limine.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceedings or posting of bond.

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\_\_\_\_\_  
Deputy Clerk

**MARK J. MIMURA**  
**CANYON COUNTY PUBLIC DEFENDER**

LARY G. SISSON  
510 Arthur Street  
Caldwell, Idaho 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

*Attorneys for Defendant*

  
FEB 01 2012

CANYON COUNTY CLERK  
B RAYNE, DEPUTY

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF**  
**THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

THE STATE OF IDAHO,  Plaintiff,  vs.  WAYNE D. ANDERSON, II,  Defendant.	CASE NOS.: CR-2011-21657-C CR-2011-31445-C ✓  <b>DEFENDANT'S MOTION IN LIMINE</b>
--	--

COMES NOW Defendant, by and through his attorneys of record, the Canyon County Public Defender's Office, and hereby moves this Court for an Order in Limine before trial and selection of a jury regarding the presentation at trial of any and all evidence or testimony of Shannon Sorini.

This Motion is based on the Idaho Rules of Evidence (I.R.E.), Rules 401, 402, 403, 404 and 702 and the following:

1. In it's Ninth Supplemental Response to Discovery Plaintiff disclosed the following:

DEFENDANT'S MOTION IN LIMINE

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“The State hereby discloses Shannon Sorini as the State's expert witness pursuant to I.R.E. 702 and 703. No written report was generated by Ms. Sorini. Ms. Sorini will testify as to her experience in dealing with victims of sexual offenses, compartmentalization, long term impact of sexual abuse, delayed disclosure, grooming, behaviors children exhibit when sexually abused and how those traits are consistent with the named victim. Ms. Sorini was provided copies of the police reports. The Curriculum Vitae for Shannon Sorini is attached.”

2. Pursuant to I.R.E. 402, evidence which is not relevant is not admissible during a trial.
3. Compartmentalization, the long term impact of sexual abuse, and grooming are not elements of the crimes charged in these two matters and thus not relevant.
4. Even if the Court considers testimony regarding the times listed in section 3 above relevant, its relevance is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and/or misleading the jury because the proposed witness has not met with or observed the alleged victims in these matters..
5. Thus, such evidence and testimony should be excluded pursuant to I.R.E. 403.
6. Furthermore, Rule 404(b) of the I.R.E. states that, “Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith.”
7. Plaintiff's desire to introduce evidence about grooming is an attempt to introduce evidence otherwise not allowed under Rule 404(b) of the I.R.E. and thus should not be allowed to be presented during the trial in these matters.

8. If Plaintiff's desire to introduce evidence about grooming is **not** an attempt to introduce evidence otherwise not allowed under Rule 404(b), then this evidence is otherwise not relevant because it is not an element of the crimes charged and inadmissible under I.R.E. 402.
9. Even if the Court considers testimony about grooming relevant, its relevance is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and/or misleading the jury the proposed witness has not met with or observed the alleged victims in these matters because the witness only has experience dealing with the *victims* of sexual offenses and not the *perpetrators*.
10. In addition, Rule 702 of the I.R.E. states that if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, then an expert may testify during a trial about the expert's knowledge.
11. The issue of understanding delayed disclosures by children who have been sexually abused is not scientific, technical or other specialized knowledge outside the understanding of ordinary jurors and thus does not require the assistance of an expert witness to testify about delayed disclosures.
12. Also, Rule 16(b)(6) of the Idaho Criminal Rules requires the prosecuting attorney to furnish upon written request the statements made by the prosecution witnesses or prospective prosecution witnesses.
13. Rules 16(b)(7) and 16(c)(4) of the Idaho Criminal Rules requires the prosecuting

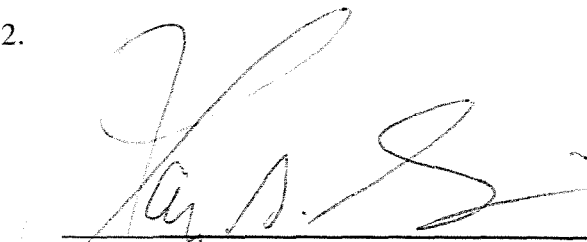


attorney to provide a written summary or report of any testimony that the state intends to introduce pursuant to Rules 702, 703 or 705 of the Idaho Rules of Evidence at trial or hearing and such summary must describe the witness's opinions, the facts and data for those opinions, and the witness's qualifications.

14. Based on the discovery materials Defendant has received to date, the Plaintiff has not provided any facts or data that would show the alleged victims in these cases are showing traits consistent with children who have been sexually abused.
15. Based on the discovery materials Defendant has received to date, the Plaintiff has not disclosed any statements by any potential prosecution witnesses that support the proposition that the alleged victims in these cases are showing traits consistent with children who have been sexually abused.
16. Consequently, if this information is not disclosed to the defense in a timely manner prior to trial, then it should not be allowed to be presented during the trial for these matters as a sanction pursuant to Rule 16(j) of the Idaho Criminal Rules.
17. If this information does not exist, then it should not be allowed to be presented during the trial for these matters pursuant to Rules 402 and 403 of the I.R.E.


Oral Argument is requested.

DATED this 15<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY That a true and correct copy of the foregoing Motion in Limine was delivered to the attorney for the Plaintiff by placing said copy in the Prosecuting Attorney's basket located at the Clerk's Office, Canyon County Courthouse, on or about this 1<sup>st</sup> day of February, 2012.

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

bm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

F I L E D  
A.M. 10 P.M.

FEB 07 2012

CANYON COUNTY CLERK  
K GORDILLO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II

Defendant.

CASE NO. CR2011-21657

CR2011-31445

**MOTION IN LIMINE  
AND NOTICE OF HEARING**

COMES NOW, Erica M. Kallin, Deputy Prosecuting Attorney for Canyon County, State of Idaho, and hereby submits the following Response to the Defendant' Motion in Limine.

The Defendant has filed a Motion In Limine to exclude the testimony of Shannon Sorini as an expert witness in the area of sexual abuse. Ms. Sorini, if allowed to testify, will not testify regarding the alleged victims. Her testimony will be focused on her experience in dealing with victims of sexual abuse, compartmentalization, long term impact of sexual abuse, delayed disclosure, grooming, and behaviors children exhibit when they are victims of sexual abuse.

MOTION IN LIMINE  
AND NOTICE OF HEARING

In his Motion in Limine, the Defendant argues that the traits and characteristics a sexual abuse victim exhibits are not elements of the crime and are overly prejudicial under IRE 403. Furthermore, the Defendant alleges understanding the issues of delayed disclosure, grooming, compartmentalization, and the behaviors the child exhibits does not fall under specialized knowledge under IRE 702. The State respectfully disagrees.

This issue has been well-settled by the appellate courts in Idaho. In State v. Matthews, 124 Idaho 806, 811 (Ct.App. 1993), the court determined “..the role of an expert is to provide testimony on subjects that are beyond the common sense, experience and education of the average juror. In State v. Hester our Supreme Court observed that the behavior patterns of young victims of incest or molestation fall into that category.” Furthermore in State v. Lawrence, the court stated,

A child may have difficulty articulating the reasons for his behavior. The state presented the expert testimony to show that victims of sexual abuse sometimes delay reporting such incidents due to feelings of fear or guilt. The testimony was narrowly circumscribed. The expert offered no opinion as to whether the children in this case had been abused. To the contrary, the expert openly acknowledged that he had not examined the children. His testimony was based on twenty years of personal experience as an administrator and therapist for a county mental health program. During his career, he had been involved with three to four hundred victims of child sexual abuse. As the district judge properly noted, this experience gave the expert information not within the common knowledge of lay persons.

112 Idaho 149 (1987).

In State v. Dutt, 139 Idaho 99 (Ct.App. 2003), Dutt challenged the testimony Mydell Yeager, a counselor, who gave the general progression of child sexual abuse, as well as the behaviors as traits victims exhibit. Yeager did not treat the victims. The Court determined so long as the state could show the witness was qualified in these areas, she could give her expert opinion regarding behaviors and characteristics. “Yeager's generalized testimony gave the jurors

specialized knowledge that could assist them in evaluating the victim's credibility. This subject matter of expert testimony was previously determined by this Court to be permissible in State v. Blackstead, 126 Idaho 14, 22 (Ct.App. 1994).”

The evidence proposed by the State has been routinely deemed admissible by the appellate courts. As such, the State respectfully requests that the Court deny the Defendant’s Motion in Limine.

DATED this 7<sup>th</sup> day of February, 2012.

IS  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

### NOTICE OF HEARING

Notice is hereby given that a hearing on the Motion filed in the above entitled matter is scheduled for the 10th day of February, 2012 at the hour of 1:30 pm before the Honorable James C. Morfitt.

DATED this 7<sup>th</sup> day of February, 2012.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 7<sup>th</sup> day of February, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail

IS/

ERICA M. KALLIN  
Deputy Prosecuting Attorney

FILED *EBP*  
A.M. P.M.  
FEB 09 2012  
CANYON COUNTY CLERK  
S HILL, DEPUTY

bm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II

Defendant.

CASE NO. CR2011-21657  
CR2011-31445\*

**NOTICE OF INTENT**

TO: Wayne D Anderson II, the above named Defendant; and Public Defender, attorney for Defendant; and Defendant's agents:

COMES NOW, Erica M. Kallin, Deputy Prosecuting Attorney for the County of Canyon, State of Idaho, notifies the Defendant in the above-entitled action of the State's intent to use other crimes, wrongs or acts.

The State has just received a letter written by the defendant to Cassie Anderson, the mother of C.A. and D.A. In this letter the defendant requests that Cassie Anderson get C.A and D.A. to lie about the incident in question. The State's attorney notified the defendant's attorney

NOTICE OF INTENT

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within two (2) hours of discovery of this new evidence. The State feels this new discovery shows evidence of guilt.

DATED This 9 day of February, 2012.

  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

NOTICE OF INTENT




**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on or about this 9 day of February, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail

  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

NOTICE OF INTENT

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F I L E D  
A.M. 2:54 P.M.

FEB 09 2012

CANYON COUNTY CLERK  
S HILL, DEPUTY

bm

BRYAN F. TAYLOR  
CANYON COUNTY PROSECUTING ATTORNEY  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605  
Telephone: (208) 454-7391

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II,

Defendant.

CASE NO. CR2011-21657

CR2011-31445\*

**MOTION TO SHORTEN TIME  
FOR HEARING AND NOTICE  
OF HEARING**

COMES NOW, ERICA M. KALLIN, Deputy Prosecuting Attorney of the  
Canyon County Prosecuting Attorney's Office, State of Idaho, and hereby moves this Court for  
an Order to Shorten Time for a Notice of Intent to be heard. That the hearing is necessary prior to  
the trial date of February, 14th, 2012 and that the delay in filing was cause by:

1. Receipt of new evidence.

## NOTICE OF HEARING

Notice is hereby given that a hearing on the Notice of Intent filed in the above entitled matter is scheduled for the 10th day of February, 2012 at the hour of 1:30 pm before the Honorable James C. Morfitt.

DATED this 9th day of February, 2012.

151  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 9th day of February, 2012, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the defendant by the method indicated below and addressed to the following:

Canyon County Public Defender

- ☐ U.S. Mail, Postage Prepaid
- ☐ Hand Delivered
- ☒ Placed in Court Basket
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ E-Mail

151  
ERICA M. KALLIN  
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **JAMES C. MORFITT** DATE: **FEBRUARY 10, 2012**

THE STATE OF IDAHO,	)	
	)	COURT MINUTE
Plaintiff,	)	
	)	CASE NO. <b>CR-2011-21657*C</b>
-vs-	)	<b>CR-2011-31445*C</b> ✓
	)	
	)	TIME: 1:30 P.M.
<b>WAYNE D. ANDERSON II.,</b>	)	
	)	REPORTED BY: Debora Kreidler
Defendant.	)	
_____	)	DCRT 3 (153-242)

This having been the time heretofore set for **Status Conference** and hearing on the **defendant's Motion in Limine, State's Notice of Intent, and duel Motions to Shorten Time** in the above entitled matters, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, and the defendant was present with counsel, Mr. Lary Sisson.

The Court noted these matters were set for Jury Trial to commence February 14, 2012, and that a number of motions had been filed.

The Court noted the defendant had filed a Motion in Limine and Motion to Shorten Time, and that the State had filed a Response to the defendant's Motion in Limine, a Notice of Intent, and a Motion to Shorten Time.

The Court granted the Motions to Shorten Time relative to both parties; and executed the proposed Order provided by the State and noted the defense had not

submitted a proposed Order to Shorten Time.

Mr. Sisson presented argument in support of the defendant's Motion in Limine regarding proposed testimony of the State's expert witness, Shannon Sorini, regarding testimony in the context of how predators groom their victims.

Ms. Kallin responded to the Motion in Limine and presented argument on behalf of the State's position.

The Court stated opinions to counsel.

Mr. Sisson presented final argument in support of the Motion in Limine.

Ms. Kallin presented further argument in response to the Motion in Limine; clarifying the State's position of the testimony to be presented by expert witness, Shannon Sorini.

**The Court stated further opinions, cited case authority, and denied the defendant's Motion in Limine on the grounds that the State would establish the expertise of the witness and that the testimony would be narrowly circumscribed.**

The Court addressed the State's Notice of Intent and reviewed the proposed letter written by the defendant to his wife that the State wished to present as evidence.

Ms. Kallin presented argument in support of the Notice of Intent.

Mr. Sisson objected to the Notice of Intent and presented rebuttal argument.

The Court stated opinions to counsel.

Ms. Kallin clarified the State's position would be that presentation of the testimony regarding the letter would be done so as to not indicate that the defendant

wrote it while incarcerated.

**As to the State's Notice of Intent, the Court ruled if appropriate foundation was laid that the letter would be relevant to show the consciousness of guilt as it was actually close to a confession, and that the probative value significantly outweighed the prejudicial effect. Further, that if the letter could not be introduced without testimony it was written by the defendant while incarcerated in the Canyon County Jail, then it would necessary to address that issue outside the presence of the jury.**

The Court reviewed with counsel, Judge Ryan's ruling on the State's Notice of Intent to present IRE 609 evidence and 404(b) motions, and discussed trial issues.

Ms. Kallin addressed the Court as to its' position regarding the defense' intent to file a specific request for discovery of the girls journals. Ms. Kallin advised the Court one of the girls' had indicated her journal had been destroyed, but Mr. Sisson believed he may be able to recover a copy of it. Ms. Kallin informed the Court the other girl, D.A. still maintains her journal, and inquired of the Court's position as to whether or not that journal needed to be submitted to the Court under seal.

Mr. Sisson stated he was not opposed to the journal being submitted under seal, and he did not wish to embarrass the girls, but there were entries in both journals that would be highly embarrassing for the girls for their father, the defendant, to know and that might be a reason why they are testify regarding conduct that the defendant has denied.

Mr. Sisson advised the Court as to the journal that had been destroyed the defendant's wife was trying to retrieve that from a hard drive; and if that was not possible there might be another avenue to obtain the journal which may lead to the need for a continuance of the jury trial.

Ms. Kallin stated she would object to the journals being disclosed and to any potential continuance of the trial, and presented rebuttal argument. Mr. Sisson presented argument on behalf of the defendant and the potential need to continue the trial.

Upon further discussion, Mr. Sisson stated he would not object to the one journal in Ms. Kallins' possession being submitted to the Court under seal for in-camera review, and outlined those items he wished the Court to look for in its review of the journal.

Ms. Kallin responded to Mr. Sisson's statements and submitted the journal of the victim, D.A., to the Court under seal for in-camera review.

The Court discussed trial issues with counsel and directed that the defendant and counsel be present at 8:30 a.m. on the morning of trial to take up any preliminary matters before the jury panel arrives.

The Court noted it had received requested jury instructions from the defense this afternoon, and that the State had previously filed its' requested instructions on January 30, 2012. Mr. Sisson informed the Court he would be submitting an additional jury instruction to give each charge separate consideration.


The Court and counsel discussed the unanimity instruction requested by Judge

Ryan; and requested each of counsel draft an instruction on that issue for consideration.

The defendant was remanded to the custody of the Canyon County Sheriff pending further proceedings or the posting of bond.

The Court adjourned at 2:42 p.m.

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Deputy Clerk



FILED  
A.M. P.M.

FEB 10 2012

CANYON COUNTY CLERK  
S HILL, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,	)	CASE NO: CR 2011-21657C
	)	CASE NO: CR 2011-31445C ✓
	)	
Plaintiff,	)	<b>MEMORANDUM DECISION</b>
	)	<b>RE: 404 (b) and 609 EVIDENCE</b>
-vs-	)	
	)	
WAYNE ANDERSON,	)	
	)	
Defendant.	)	

THIS MATTER CAME BEFORE THE COURT on January 20, 2012, for oral argument on Defendant's objections to the State using I.R.E. 404 (b) and I.R.E. 609 evidence of other crimes, wrongs or acts. The Defendant was represented by his attorney of record Mr. Lary Sisson. The State was represented by Ms. Erica M. Kallin, Canyon County Deputy Prosecuting Attorney.

**FACTUAL AND PROCEDURAL BACKGROUND**

On September 24, 1998, the Defendant was convicted of lewd conduct with a child under sixteen, a felony, in Bear Lake County, Idaho; in case number CR-1998-223. Defendant was convicted upon his plea of guilty. The Defendant was released from custody on parole on July 27, 2006.

In these consolidated cases, the Defendant is charged with two counts of sexual abuse of a minor under sixteen, in violation of I.C. § 15-1506 and one count of lewd conduct with a minor under sixteen, in violation of I.C. § 15-1508.

MEMORANDUM DECISION RE: 404 (b) and 609 EVIDENCE

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The State seeks to introduce the Defendant's prior conviction of Lewd Conduct with a Minor Child pursuant to I.R.E 609, impeachment by evidence of conviction of a crime. The State argues that this prior conviction and the nature of this conviction are relevant to the credibility of the witness and the probative value of this evidence outweighs any danger of unfair prejudice. Furthermore, the State argues that because the Defendant was released in 2006, the evidence falls within the ten year rule under I.R.E. 609(b). The State recognized that this evidence would only be admissible if the Defendant testifies at trial. The State declares that impeachment using this evidence is appropriate as this conviction constitutes a crime of untruthfulness.

Additionally, the State seeks to introduce I.R.E. 404(b) evidence of 1) prior bad acts by the Defendant against the alleged victims D.A. and C.A. within the timeframe charged in this case to show common scheme or plan to sexually exploit young girls and 2) the Defendant's prior touching of victim E.A. for which the defendant had been convicted in 1998, to prove motive, plan, opportunity, common scheme, and/or absence of mistake. The State pointed out that the nature of the relationship between the prior victim E.A. and these victims D.A. and C.A. are similar – these girls are the Defendant's daughters. The State pointed to other similarities between this case and the prior conviction including: the nature and place of the touching which was manual to genital contact, each case included a secret relationship between the Defendant and the victims, and the Defendant hid these acts from his wife, the girls' mother. The only difference the State pointed to was the age of these victims at the time the alleged acts occurred. E.A. was five (5) years old at the time of occurrence whereas alleged victims D.A. and C.A. were between the ages of thirteen (13) and fifteen (15) years.

Defense counsel stipulated and this Court orally ruled that the prior bad acts with the charged victims within the timeframe charged would be admitted and that a unanimity instruction and special verdict form would be given to the jury at trial.

Defense counsel objected to the evidence of prior bad acts against victim E.A. because this evidence is merely propensity evidence and the State would need to establish the prior bad acts as fact. Defense argued that the State cannot use this evidence in its case-in-chief as a method of anticipating a defense of mistake. Defense further argued

MEMORANDUM DECISION RE: 404 (b) and 609 EVIDENCE

that the only way this evidence might be admissible would be in rebuttal. Defense pointed out that the period of time lapsing between the prior conviction and these alleged crimes is somewhere between nine years and sixteen years which contradicts the State's argument that this is evidence of a common scheme or plan. The State responded that the reason for this lapse in time was because of the Defendant's incarceration.

**GENERAL FINDINGS OF LAW AND ANALYSIS RE: 609 EVIDENCE**

Under I.R.E. 609 this Court must apply a two-prong test to determine whether evidence of a prior conviction is admissible. First, this Court must determine whether the fact or nature of the conviction is relevant to the witnesses credibility; and second, whether the probative value outweighs its prejudicial effect. *State v. Thompson*, 132 Idaho 628, 360, 977 P.2d 890, 892 (1999); *State v. Bush*, 131 Idaho 22, 30, 951 P.2d 1249, 1257 (1997). The Supreme Court reviews this decision-making process as follows:

When reviewing an exercise of discretion on appeal, this Court conducts the following inquiring: 1) whether the lower court correctly perceived the issue as one of discretion; 2) whether the court acted within the outer bounds of such discretion and consistently with legal standards applicable to specific choices; and 3) whether the court reached its decision by an exercise of reason.

*Id.* (citing *Bush*, 131 Idaho at 31) (citing *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989)).

Under the first prong, relevance, the Supreme Court has recognized that different crimes are probative to a determination of credibility while others are not. These can be classified into three categories:

Category one involves crimes such as perjury which are 'intimately connected' with the issue of credibility. Category two involves crimes such as robbery or burglary which are 'somewhat less relevant' to the issue of credibility. Finally category three involves 'acts of violence...which generally have little or no direct bearing on honesty and veracity.

*Thompson*, 132 at 893 (citing *State v. Ybarra*, 102 Idaho 573, 581, 634 P.2d 432, 443 (1981) (internal citations omitted)).

In *Bush*, the Court recognized that a conviction for immoral acts with a child fell into the second category “i.e. a crime which, while not directly showing a propensity to falsify, does disclose a disregard for the rights of others which one might reasonably expect to express itself in giving false testimony if such would be advantageous to the witness.” 131 Idaho at 31.

The second prong, the probative value of the defendant’s prior conviction against its prejudicial impact, requires this Court to consider several factors including: 1) impeachment value of the prior crime, 2) remoteness, 3) criminal history, 4) **similarities between the past crime and the one charged**, 5) importance of the witness’ testimony, 6) importance of the credibility issue, and 7) nature and extent of witness’ criminal record. *Id.* (citing *State v. Rodgers*, 119 Idaho 1066, 1073, 812 P.2d 1227, 1234 (Ct.App. 1990). (emphasis added).

To minimize the danger of unfair prejudice, the Supreme Court has upheld lower courts’ decisions to admit the fact of the conviction, but exclude evidence of the nature of the offense. *State v. Thompson*, 132 at 633; *State v. Rodgers*, 119 Idaho at 1047.

The Defendant’s previous conviction is relevant. The Defendant was charged, plead guilty, and was convicted of lewd conduct with a minor under sixteen, his daughter. This Court recognizes the similarities of the past crime with the crime charged here. The Defendant is charged with the same underlying criminal conduct as his previous conviction – sexual contact with his other two daughters. This conviction falls into that middle category of crimes relating to credibility. It does tend to show disregard for the rights of others which could result in the giving of false testimony. Assuming these crimes have no witnesses other than the alleged victims and the Defendant himself, credibility is a central issue, and therefore the inclination to give false testimony will be exacerbated.

However, the nature of the crime is significantly prejudicial to the Defendant. A juror would be more likely to find the Defendant guilty upon hearing that the Defendant had previously been convicted of lewd conduct with another of his daughters. It is this Court’s conclusion that this is inadmissible propensity evidence. Like the courts in

*Thompson and Rodgers*, to minimize this prejudice this Court will allow the fact of conviction but not the nature of the offense.

In determining whether this prior conviction falls within the ten year rule under I.R.E. 609(b), this Court concludes that the ten year period referred to in the Rule begins when the Defendant was released from the penal system which was July 27, 2006. See *State v. Rodgers*, 119 Idaho 1066, 1072, 812 P.2d 1227, 1233, n.2 (1990).

**GENERAL FINDINGS OF LAW AND ANALYSIS RE: 404(b) EVIDENCE**

The Idaho Supreme Court has determined on numerous occasions that evidence of other bad acts may be admitted in sexual abuse cases, pursuant to Rule 404 (b). See *State v. Lippert*, 145 Idaho 586, 181 P.3d 512, 515 (Ct. App. 2007); *State v. LaBelle*, 126 Idaho 564, 567, 887 P.2d 1071, 1074 (1995); *State v. Phillips*, 123 Idaho 178, 181, 845 P.2d 1211, 1214 (1993); *State v. Moore*, 120 Idaho 743 at 745-47, 819 P.2d 1143 at 1145-47; *State v. Byington*, 132 Idaho 597, 606-07, 977 P.2d 211, 220-21 (Ct.App.1998), *aff'd* 132 Idaho 589, 977 P.2d 203 (1999).

For example, the issue in *State v. Tolman*, 1221 Idaho 899, 828 P.2d 1304 (1992), was whether, in a case regarding lewd conduct and sexual abuse of a minor, testimony of prior sexual misconduct was admissible under Rule 404 (b). The Idaho Supreme Court, citing its decision in *State v. Moore*, 120 Idaho 743, 819 P.2d 1143 (1991), held that such testimony was admissible to show a common scheme or plan. *Tolman*, 121 Idaho at 904. The *Tolman* court also reiterated other policies in Idaho, such as admitting evidence of a common criminal design where relevant to the credibility of the parties. *Id.* The Idaho Supreme Court reasoned that sexual abuse offenses almost always occur in private and the only direct witnesses are the alleged victim and the defendant. *Id.* The credibility of the witnesses is often a determining factor and it is easy to challenge the credibility of the victim. *Id.* at 905.

Idaho cases affirming the use of evidence of bad acts in sexual misconduct cases focus on prior conduct that was actual sexual abuse and that was either similar abuse or involved victims of similar ages to those abused. *State v. Field*, 144 Idaho 559, 569, 165 P.3d 273, 283 (2007).

In 2009, the Idaho Supreme Court filed an opinion which provides further guidance on the status of Idaho law in the area of prior sexual misconduct in cases involving the sexual abuse and exploitation of children. *State v. Grist*, 147 Idaho 49, 205 P.3d 1185 (2009). In *Grist*, the Idaho Supreme Court was asked to overturn *State v. Moore, Id.* and its progeny. The Supreme Court's response was:

We decline to overrule *Moore* and *Tolman* in their entirety. However, as these decisions have been interpreted as creating an exception in child sex cases to the prohibition of character evidence, we must find it necessary to revisit a theoretical underpinning for the introduction of uncharged misconduct in cases involving the sexual abuse and exploitation of children. . . . **Any decision from this Court or the Court of Appeals that suggests that evidence offered in a case involving an allegation of sexual misconduct with a child should be treated differently than any other type of case is no longer controlling authority in Idaho's courts.**

*Id.* at 51 (emphasis added).

Thus, *Grist* cautions "that the admission of I.R.E. 404 (b) evidence in a child sex abuse case is subject to the same analysis as the admission of such evidence in any other case." *Id.* The court provides the following 404 (b) admissibility standard:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith. This rule has its source in the common law. The common law rule was that 'the doing of a criminal act, not part of the issue, is not admissible as evidence of the doing of the criminal act charged.'

The policy underlying the common law rule was the protection of the criminal defendant. 'The prejudicial effect of [character evidence] is that it induces the jury to believe the accused is more likely to have committed the crime on trial because he is a man of criminal character.' Character evidence, therefore, takes the jury away from their primary consideration of the guilt or innocence of the particular crime on trial. The drafters of I.R.E. 404(b) were careful to guard against the admission of evidence that would unduly prejudice the defendant, while still allowing the prosecution to present probative evidence.

Admissibility of evidence of other crimes, wrongs, or acts when offered for a permitted purpose is subject to a two-tiered analysis. **First, the trial court must determine whether there is sufficient evidence to establish the other crime or wrong as fact. The trial court must also determine whether the fact of another crime or wrong, if established, would be relevant.** Evidence of uncharged misconduct must be relevant to a material and disputed issue concerning the crime charged, other than propensity. Such evidence is only relevant if the jury can reasonably conclude that the act occurred and that the defendant was the actor.

**Second, the trial court must engage in a balancing under I.R.E. 403<sup>1</sup> and determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence.** This balancing is committed to the discretion of the trial judge. The trial court must determine each of these considerations of admissibility on a case-by-case basis.

*Id.* at 52 (emphasis added) (internal citations omitted).

The *Grist* court also addresses the issues of corroboration in sex crime cases by restating the court's conclusion in *State v. Moore*, 120 Idaho 743, 819 P.2d 1143 (1991), "Corroborative evidence in sex crime cases involving youthful victims is often times necessary to establish the credibility of a young child. Too often the determination of the case rests strictly upon establishing that the victim's testimony is more credible than that of the alleged perpetrator." *Grist*, 147 Idaho at 53. However, the court went on to state that, "we wish to emphasize that evidence offered for the purpose of 'corroboration' must actually serve that purpose; the courts of this state must not permit the introduction of

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<sup>1</sup> "The trial court's I.R.E. 403 determination will not be disturbed on appeal unless it is shown to be an abuse of discretion." *State v. Johnson*, 148 Idaho 664, 667, 227 P.3d 918, 921 (2010) (citing *State v. Enno*, 119 Idaho 392, 406, 807 P.2d 610, 624 (1991)). "To determine whether discretion has been abused, the Court must ascertain: first whether the trial court correctly perceived the issue as one requiring the exercise of discretion; second, whether the court acted within the outer boundaries of its discretion and consistently with legal standards applicable to the specific choices available to it; and, third, whether the court reaches its conclusion by an exercise of reason." *Id.* (citing *Zamora v. State*, 123 Idaho 192, 194, P.2d 194, 196 (1992)).

impermissible propensity evidence merely by relabeling it as ‘corroborative’ or as evidence of a ‘common scheme or plan.’ *Id.* at 53-4.

As articulated in *Grist*, the law requires this Court to first determine whether there is sufficient evidence to establish the alleged sexual conduct with uncharged victim E.A. as fact. The record contains evidence from the Bear Lake case, including the Defendant’s confession, entry of plea of guilty, and judgment of conviction. This evidence clearly establishes that the Defendant was criminally culpable for the charged crime. There is nothing in the record from the Defendant that rebuts the validity of this evidence. For purposes of ruling on the 404 (b) issue the Court finds there is sufficient evidence to establish this alleged sexual conduct as fact.

The Court must next determine whether the fact of the alleged sexual conduct with E.A would be relevant.

The sexual misconduct by the Defendant with E.A is similar in nature (manual to genital) and the relationship of the child is similar to the children in the charged offenses. That is, in all three instances, the alleged sexual misconduct is with a biological daughter of the Defendant. Therefore, this Court concludes that it is relevant.

Since the Court concludes that the prior sexual misconduct with daughter E.A. is relevant, the Court must then determine if its probative value is substantially outweighed by the danger of unfair prejudice to the Defendant.

The State argues that the testimony of E.A. should be allowed to prove motive, plan, opportunity, common scheme, and/or absence of mistake. This Court agrees that so long as “mistake” is not asserted as a defense, the prior sexual misconduct with E.A. should not be admitted for the purpose of showing “absence of mistake”. Although plan, opportunity and/or common scheme might be proven by admission of the prior sexual misconduct involving E.A., this Court is concerned that this proof is substantially outweighed by the danger that the jury will summarily convict when they learn of a prior sexual misconduct conviction with a biological daughter without requiring proof beyond a reasonable doubt regarding the charged conduct here. In other words, this Court believes unfair prejudice occurs with the admission of this evidence.



Furthermore, this is not a case involving the need of corroboration. In this case, there is not only one victim's word against the Defendant. Instead, the Defendant is charged with three counts against two defendants. As stated in *Grist*, "evidence offered for the purpose of 'corroboration' must actually serve that purpose; the courts of this state must not permit the introduction of impermissible propensity evidence merely by relabeling it 'corroborative' or as evidence of a common scheme or plan." *Grist*, 147 Idaho at 53-4.

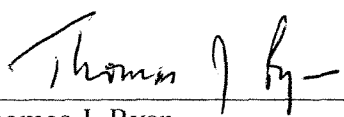
While the conduct involving E.A. is relevant, it is also propensity evidence against the Defendant which the law prohibits. In the context of a case which will have two different minor children testifying that they were the victims of lewd conduct at the hands of the Defendant, this court cannot find that the probative value of the testimony from E.A. substantially outweighs the danger of unfair prejudice.

#### CONCLUSION

Therefore, based upon the foregoing reasoning, it is the ruling of this Court that the fact of the Defendant's prior felony conviction will be admitted pursuant to I.R.E. 609; however, the nature of the charge is inadmissible. Furthermore, the evidence of previous sexual misconduct with E.A. is not admissible in the State's case in chief pursuant to I.R.E. 404 (b). However, the uncharged conduct of the Defendant with the charged victims D.A. and C.A. will be admitted. A limiting instruction and unanimity instruction will be given to the jury that they cannot consider any uncharged act in determining the Defendant's guilt or innocence and they must unanimously agree on what act or acts constitute the charged crimes.

DATED:

2/9/12

  
\_\_\_\_\_  
Thomas J. Ryan  
District Judge

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was mailed, hand delivered or sent via facsimile transmission to the following persons on this 10 day of February, 2012.

**Erica M. Kallin**

DEPUTY PROSECUTING ATTORNEY, CANYON COUNTY

1115 Albany

Caldwell, ID 83605

**Lary Sisson**

Mark J. Mimura

Canyon County Public Defender

510 Arthur Street

Caldwell, ID 83605

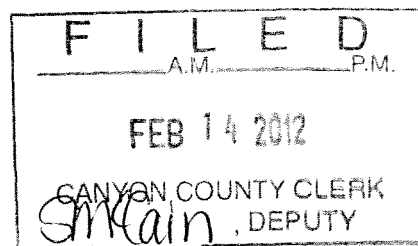
Chris Yamamoto

Clerk of the District Court

By: \_\_\_\_\_

  
Deputy Clerk

bm



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II

Defendant.

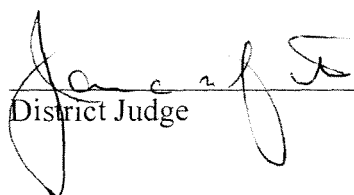
CASE NO. CR2011-21657

CR2011-31445 ✓

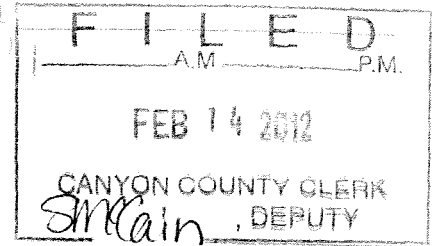
**ORDER TO SHORTEN TIME**

A Motion to Shorten Time for hearing Notice of Intent having been filed in the above matter, and good cause existing therefore, IT IS HEREBY ORDERED, that the Motion to Shorten Time for hearing Notice of Intent is granted.

DATED this 10<sup>th</sup> day of February, 2012.

  
\_\_\_\_\_  
District Judge

bm



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II,

Defendant.

CASE NO. CR2011-21657

**ORDER TO CONSOLIDATE**

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II,

Defendant.

CASE NO. 2011-31445 ✓

**ORDER TO CONSOLIDATE CASES**

Pursuant to the Plaintiff's Motion, and good cause appearing,

IT IS HEREBY ORDERED That the above entitled cases be consolidated for the  
purpose of trial.

DATED this 4<sup>TH</sup> day of January, 2012.  
*NONE PRO TUNC*  
*A*

*James C. Wright*  
Judge  
For Hon Thomas J. Ryan

ORDER TO  
CONSOLIDATE

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON  
PRESIDING **JAMES C. MORFITT** DATE: FEBRUARY 14, 2012

THE STATE OF IDAHO,	)	COURT MINUTES
	)	
Plaintiff,	)	CASE NO: CR 2011-31445*C
	)	CR 2011-21657*C
vs	)	
	)	TIME: 9:00 A.M.
WAYNE D. ANDERSON II,	)	
	)	REPORTED BY: Debra Kreidler
	)	
Defendant.	)	
	)	DCRT 2(858-933)
	)	

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This having been the time heretofore set for **change of plea** in the above entitled matter, the State was represented by, Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County; and the defendant was present with counsel, Mr. Lary Sisson.

The Court indicated that it had been requested to review a journal, in camera, which had been presented at the motion hearing held last Friday. The Court reviewed said journal for approximately two and a half hours and determined there was no information of value to the defense for the purposes of providing a motive for fabrication by the victim as stated in court at the prior hearing. Therefore, the Court would not allow the journal to come into evidence.

The Court returned the journal to Ms. Kallin per stipulation of counsel.

**Ms. Kallin informed the Court the defendant would plead guilty in CR 2011-31445\*C to Count I Part I and Part II, Lewd Conduct with a Child Under 16, and Count II Part I and Part II, Sexual Abuse of a Child under 16 Years of Age would be dismissed. CR 2011-21657\*C would also be dismissed in its entirety, with full victim's rights to remain. The State would agree not to file a charge of Intimidating a Witness based on the letter written to the victim's mother while the defendant was in custody.**

**Ms. Kallin further advised the Court the State would agree to recommend fifteen (15) years fixed with the indeterminate portion of the sentence open for argument. In addition it was her understanding that the defendant would agree to full restitution on all counts including the charges to be dismissed.**

**Mr. Sisson advised the Court that the defendant would like to enter an Alford plea.**

The Court reiterated its understanding of the agreement.

In answer the Court's inquiry, each of counsel and the defendant indicated that was the agreement.

The Court advised the defendant that it was not bound by recommendations or negotiations of the attorneys, only by the maximum penalties provided by law.

The Court informed the defendant the felony offense of **Lewd Conduct with a Child under 16 with the enhancement**, carried a maximum possible penalty of life imprisonment and/or a fine in the amount of \$50,000.00. It carried a mandatory minimum penalty of fifteen (15) years.

In answer to the Court's inquiry, the defendant entered a formal **plea of guilty** to the felony charge of **Lewd Conduct with a Child under 16 with the sentencing enhancement**.

Mr. Sisson submitted a written Guilty Plea Advisory form to the Court.

The Court examined the defendant and determined he had reviewed the Guilty Plea Advisory form with his attorney and that he had initialed and signed the document. The Court reviewed with the defendant the questions and answers provided in the Guilty Plea Advisory form and determined the defendant understood the questions contained in the document and the rights he would be waiving. Further, the Court determined the defendant believed he had adequate time to discuss his change of plea with his attorney. Mr. Sisson verified his signature on the Guilty Plea Advisory and noted for the record those portions of the document which he filled out; and those portions filled out by the defendant. Further, he understood his rights, defenses, and possible consequences upon entering a plea of guilty.

The Court examined Mr. Sisson and determined all discovery had been received, and there were no suppression issues, however, the defendant had

made some admissions. Further, he was satisfied there was a factual basis for a plea of guilty.

The Court examined the defendant and determined his age, level of education and that he read, spoke and understood the English language. The defendant stated he was not taking prescription medication, and had not consumed any alcohol/drugs within the last twenty-four (24) hours.

The Court determined there had been no promises of leniency, or threats made to the defendant to cause him to plead guilty.

The Court advised the defendant that by entering a plea of guilty to the charge, he would be waiving his right to a jury trial, the right to confront and cross-examine the State's witnesses, the right to present witnesses, evidence and testimony, the right to use the subpoena power of the Court for the attendance of witnesses, the right to require the State to prove his guilt beyond a reasonable doubt, the right to the presumption of innocence and the right against self-incrimination, and finally he would be waiving any defenses he may have.

In answer to the Court's inquiry, the defendant indicated he understood the constitutional rights he would waive upon entry of a guilty plea.

The Court further advised the defendant that if he was currently on probation or parole for any offense, a guilty plea could adversely affect the status of his earlier probation/parole. Further, in the state of Idaho, three or more felony



convictions constitute a persistent violator enhancement which increased the maximum possible penalty to life imprisonment.

The Court advised the defendant that after review of his criminal history it appeared that this conviction would be his second felony conviction, therefore if he was charged with another felony charge the persistent violator enhancement would likely be filed as well.

The Court further advised the defendant that if he was not a citizen of the United States and pled guilty, or was found guilty of any criminal offense, it could have immigration consequences to include, deportation from the United States, inability to obtain legal status in the United States, or denial of an application for United States citizenship.

The defendant indicated that he was satisfied with the representation of counsel, and had sufficient time to discuss matters with counsel prior to entry of this plea. Additionally, he did not have any further questions for his counsel, or the Court at this time.

The Court additionally indicated it was highly unlikely the defendant would be allowed to withdraw the guilty plea once accepted by the Court. The defendant stated he understood.

The Court advised the defendant that by entering an Alford plea he was allowing the Court to accept a plea of guilty without inquiring into the factual basis or requiring him to factually admit guilty. He would be allowed to enter a guilty

plea to avoid a jury trial and by doing so it would allow him to take advantage of the plea agreement reached in this matter.

The Court having found the plea of guilty was made freely, voluntarily, knowingly and intentionally, without threats or coercion, allowed the defendant to withdraw his plea of not guilty, and accepted the plea of guilty.

The Court ordered the defendant obtain a **Presentence Investigation Report** and set this matter for **sentencing the April 16, 2012 at 2:30 p.m., before the Honorable Thomas J. Ryan.**

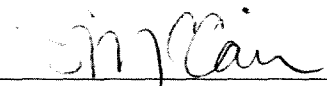
In answer to the Courts inquiry, each of counsel indicated that the 19-2524 evaluations would not be needed in this matter.

Mr. Sisson further advised the Court that his client would decline participation in a psychosexual evaluation.

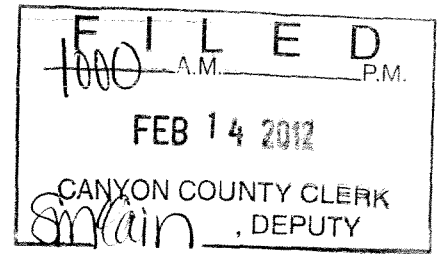
The Court reminded the defendant that the no contact order previously entered was in full force and affect and any violation of said order could constitute a new crime and would be taken into consideration at sentencing.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceeding or post of the bond.

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Deputy Clerk

**GUILTY PLEA ADVISORY**



Defendant's Name: WAYNE D. ANDERSON, II

Date: \_\_\_\_\_ Case No. CR-2011-31455-C

Nature of Charge(s): \_\_\_\_\_ Minimum & Maximum Possible Penalty:

Lewd Conduct with Child Under 16 \_\_\_\_\_ Imprisoned in the state prison for a term of

\_\_\_\_\_ not more than life, a \$50,000 fine, or both,

\_\_\_\_\_ Up to \$5000 civil penalty, register as sex

\_\_\_\_\_ offender, DNA sample and right thumbprint

2<sup>nd</sup> Offense Sentencing \_\_\_\_\_ Mandatory minimum 15 years  
Enhancement

**STATEMENT OF RIGHTS & EXPLANATION OF WAIVERS BY PLEA OF GUILTY  
(PLEASE INITIAL EACH RESPONSE)**

1. You have the right to remain silent. You do not have to say anything about the crime(s) you are accused of committing. If you elected to have a trial, the state could not call you as a witness or ask you any questions. However, anything you do say can be used as evidence against you in court.

I understand that by pleading guilty I am waiving my right to remain silent before and during trial. [Signature]

2. The waiver of your right to remain silent only applies to your plea of guilty to the crime(s) in this case. Even after pleading guilty, you will still have the right to refuse to answer any question or to provide any information that might tend to show you committed some other crime(s). You can also refuse to answer or provide any information that might tend to increase the punishment for the crime(s) to which you are pleading guilty.

I understand that by pleading guilty to the crime(s) in this case, I still have the right to remain silent with respect to any other crime(s) and with respect to answering questions or providing information that may increase my sentence. [Signature]

3. You have the right to be represented by an attorney. If you want an attorney and cannot pay for one, you can ask the judge for an attorney who will be paid by the county. [Signature]

4. You are presumed to be innocent. You would be found guilty if: 1) you plead guilty in front of the judge, or 2) you are found guilty at a jury trial.

I understand that by pleading guilty I am waiving my right to be presumed innocent. MAI.

5. You have the right to a speedy and public jury trial. A jury trial is a court hearing to determine whether you are guilty or not guilty of the charge(s) brought against you. In a jury trial, you have the right to present evidence in your defense and to testify in your own defense. The state must convince each and every one of the jurors of your guilt beyond a reasonable doubt.

I understand that by pleading guilty I am waiving my right to a speedy and public jury trial. MAI.

6. You have the right to confront the witnesses against you. This occurs during a jury trial where the state must prove its case by calling witnesses to testify under oath in front of you, the jury, and your attorney. Your attorney could then cross-examine (question) each witness. You could also call your own witnesses of your choosing to testify concerning your guilt or innocence. If you do not have the funds to bring those witnesses to court, the state will pay the cost of bringing your witnesses to court.

I understand that by pleading guilty I am waiving my right to confront the witnesses against me, and present witnesses and evidence in my defense. MAI.

### QUESTIONS REGARDING PLEA

(Please answer every question. If you do not understand a question consult your attorney before answering.)

PLEASE CIRCLE ONE

1. Do you read and write the English language?  
If not, have you been provided with an interpreter to help you fill out this form?

YES NO

YES NO

2. What is your age? 42.

3. What is your true and legal name? Wayne Davies Anderson.

4. What was the highest grade you completed? 13.

If you did not complete high school, have you received

either a general education diploma or high school equivalency diploma?

YES

NO

5. Are you currently under the care of a mental health professional?

YES

NO

6. Have you ever been diagnosed with a mental health disorder?

YES

NO

If so, what was the diagnosis and when was it made? \_\_\_\_\_

7. Are you currently prescribed any medication?

YES

NO

If so, have you taken your prescription medication during the past 24 hours?

YES

NO

8. In the last 24 hours, have you taken any medications or drugs, or drank any alcoholic beverages which you believe affect your ability to make a reasoned and informed decision in this case?

YES

NO

9. Is there any other reason that you would be unable to make a reasoned and informed decision in this case?

YES

NO

10. Is your guilty plea the result of a plea agreement?

YES

NO

If so, what are the terms of that plea agreement?  
(If available, a written plea agreement should be attached hereto as "Addendum 'A'")

If Defendant pleads guilty to Lewd Conduct and the 2<sup>nd</sup> Offense enhancement in

CR-2011-31455-C, then State will dismiss all other charges in CR-2011-31455 and

CR-2011-21657-C, not file Witness Intimidation charges against Defendant and

State will recommend 15 years fixed with open indeterminate recommendations.

Full victim's rights for all victims in both cases.

11. There are two types of plea agreements. Please initial the one paragraph below which describes the type of plea you are entering:

- a. I understand that my plea agreement is a binding plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to

withdraw my plea of guilty and proceed to a jury trial. \_\_\_\_\_.

b. I understand that my plea agreement is a non-binding plea agreement. This means that the court is not bound by the agreement or any sentencing recommendations, and may impose any sentence authorized by law, including the maximum sentence stated above. Because the court is not bound by the agreement, if the district court chooses not to follow the agreement, I will not have the right to withdraw my guilty plea.                     .

12. As a term of your plea agreement, are you pleading guilty to more than one crime?

YES

NO

If so, do you understand that your sentences for each crime could be ordered to be served either concurrently (at the same time) or consecutively (one after the other)?

YES

NO

13. Is this a conditional guilty plea in which you are reserving your right to appeal any pre-trial issues?

YES

NO

If so, what issue are you reserving the right to appeal?

---

14. Have you waived your right to appeal your judgment of conviction and sentence as part of your plea agreement?

YES

NO

15. Have any other promises been made to you which have influenced your decision to plead guilty?

YES

NO

If so, what are those promises?

---

16. Do you feel you have had sufficient time to discuss your case with your attorney?

YES

NO

17. Have you told your attorney everything you know about the crime?

YES

NO

18. Is there anything you have requested your attorney to do that has not been done?

YES

NO

If yes, please explain. \_\_\_\_\_

19. Your attorney can get various items from the prosecutor relating to your case. This may include police reports, witness statements, tape recordings, photographs, reports of scientific testing, etc. This is called discovery. Have you reviewed the evidence provided to your attorney during discovery?

☒ YES

☐ NO

20. Have you told your attorney about any witnesses who would show your innocence?

☒ YES

☐ NO

21. Do you understand that by pleading guilty you will waive any defenses, both factual and legal, that you believe you may have in this case?

☒ YES

☐ NO

22. Are there any motions or other requests for relief that you believe should still be filed in this case?

☐ YES

☒ NO

If so, what motions or requests? \_\_\_\_\_

23. Do you understand that if you enter an unconditional guilty plea in this case you will not be able to challenge any rulings that came before the guilty plea including: 1) any searches or seizures that occurred in your case, 2) any issues concerning the method or manner of your arrest, and 3) any issues about any statements you may have made to law enforcement?

☒ YES

☐ NO

24. Do you understand that when you plead guilty, you are admitting the truth of each and every allegation contained in the charge(s) to which you plead guilty?

☐ YES

☒ NO

25. Are you currently on probation or parole?

☐ YES

☒ NO

If so, do you understand that a plea of guilty in this case could be the basis of a violation of that probation or parole?

☐ YES

☐ NO

26. Are you aware that if you are not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or

removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship?

**YES**

**NO**

27. Do you know whether the crime to which you will plead guilty would require you to register as a sex offender? (I.C. § 18-8304)

**YES**

**NO**

28. Are you aware that if you plead guilty you may be required to pay restitution to the victims in this case? (I.C. § 19-5304)

**YES**

**NO**

29. Have you agreed to pay restitution to any other party as a condition of your plea agreement?

**YES**

**NO**

If so, to whom? \_\_\_\_\_

30. Is there a mandatory driver's license suspension as a result of a guilty plea in this case?

**YES**

**NO**

If so, for how long must your license be suspended? \_\_\_\_\_

31. Are you pleading guilty to a crime for which a mandatory domestic violence, substance abuse, or psychosexual evaluation is required? (I.C. §§ 18-918(7)(a), -8005(9), -8317)

**YES**

**NO**

32. Are you pleading guilty to a crime for which you may be required to pay the costs of prosecution and investigation? (I.C. § 37-2732A(K))

**YES**

**NO**

33. Are you pleading guilty to a crime for which you will be required to submit a DNA sample to the state? (I.C. § 19-5506)

**YES**

**NO**

34. Are you pleading guilty to a crime for which the court could impose a fine for a crime of violence of up to \$5,000, payable to the victim of the crime? (I.C. § 19-5307)

**YES**

**NO**

35. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to vote in Idaho? (Id. CONST. art. 6, § 3)

**YES**

**NO**

36. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to hold public office in Idaho? (Id. CONST. art. 6, § 3)

**YES**

**NO**



37. Do you understand that if you plead guilty to a felony, during the period of your sentence, you will lose your right to perform jury service in Idaho? (ID. CONST. art. 6, § 3)

☒ YES

☐ NO

38. Do you understand that if you plead guilty to a felony you will lose your right to purchase, possess, or carry firearms? (I.C. § 18-310)

☒ YES

☐ NO

39. Do you understand that no one, including your attorney, can force you to plead guilty in this case?

☒ YES

☐ NO

40. Are you entering your plea freely and voluntarily?

☒ YES

☐ NO

41. Are you pleading guilty because you did commit the acts alleged in the information or indictment?

☐ YES

☒ NO

42. If you were provided with an interpreter to help you fill out this form, have you had any trouble understanding your interpreter?

☐ YES

☐ NO

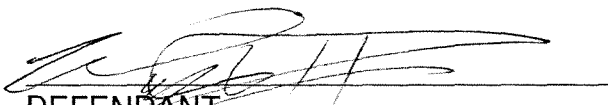
43. Have you had any trouble answering any of the questions in this form which you could not resolve by discussing the issue with your attorney?

☐ YES

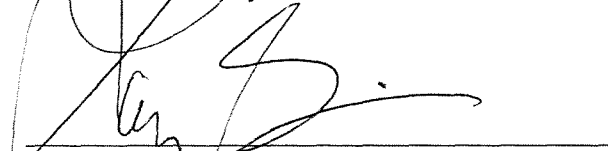
☒ NO

I have answered the questions on pages 1-7 of this Guilty Plea Advisory form truthfully, understand all of the questions and answers herein, have discussed each question and answer with my attorney, and have completed this form freely and voluntarily. Furthermore, no one has threatened me to do so.

Dated this 14<sup>th</sup> day of February, 2012.

  
DEFENDANT

I hereby acknowledge that I have discussed, in detail, the foregoing questions and answers with my client.

  
DEFENDANT'S ATTORNEY

**MARK J. MIMURA  
CANYON COUNTY PUBLIC DEFENDER**

Lary G. Sisson  
510 Arthur Street  
Caldwell, Idaho 83605  
Phone: (208) 639-4585  
Fax: (208) 639-4611  
Idaho State Bar No. 6072

*Attorneys for Defendant*

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

THE STATE OF IDAHO,

Plaintiff

vs.

WAYNE D. ANDERSON, II,

Defendant.

CASE NO. CR-2011-21657-C  
CR-2011-31445-C

**MOTION TO WITHDRAW  
GUILTY PLEA**

COMES NOW, the above-named Defendant, WAYNE D. ANDERSON, II, by and through his attorney of record, the Canyon County Public Defender's Office, and hereby moves this Honorable Court to allow the defendant to withdraw his plea of guilty, pursuant to I.C.R. 33(c). In support of this motion, the defendant states the following:

1. Defendant pled guilty via an "Alford plea" to one count of Sex Abuse of a Minor Under Sixteen in CR-2011- 21657-C , one count of Lewd Conduct with a Minor Under Sixteen in CR-2011-31455-C, and a sentencing enhancement of having a previous sex offense conviction on the 14<sup>th</sup> day of February, 2012.
2. Prior to, during, and after his change of plea, Defendant has maintained that he is not guilty of the crimes alleged against him.


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CATKINSON, DEPUTY

3. The day prior to changing his plea, Defendant spoke to his wife who unduly, and perhaps unlawfully, persuaded Defendant to plead guilty in these matters thus making his change of plea not freely and voluntarily done.
4. Furthermore, the "plea agreement" offered by the prosecution is not valid because it is not equitable and does not offer Defendant fair consideration for Defendant pleading guilty to crimes and a sentencing enhancements with require a minimum of 15 years in the state penitentiary and potentially up to remainder of Defendant's life in custody.
5. In addition, Defendant believes that his accuser will come forward, declare that they provided false information to the law enforcement officers investigating these cases, and that they will provide information and/or testimony that will exonerate Defendant.
6. Defendant desires to exercise his constitutional right to a trial by jury.
7. Defendant will submit, in the near future, an Affidavit in Support of Motion to Withdraw Guilty Plea.
8. Defendant reserves the right to supplement the record with evidence, testimony, legal argument, etc. in order to support his request to withdraw his guilty pleas.
9. The State will not be prejudiced if Defendant is allowed to withdraw his guilty plea.

WHEREFORE, because Defendant is not guilty, he did not freely and voluntarily change his plea, and he was not given an equitable plea agreement by Plaintiff, the

defendant respectfully requests the Court to allow him to withdraw his plea of guilty and set this matter for Jury Trial.

DATED, this 29<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

#### CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of March, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

☒ By delivering copies of the same to the courthouse box of the attorney(s) indicated below.

Canyon County Prosecutor's Office  
1115 Albany Street  
Caldwell, Idaho 83605

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **APRIL 9, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR2011-21657-C
	)	CR2011-31445-C
	)	
vs.	)	TIME: 10:30 A.M.
	)	
WAYNE ANDERSON,	)	<b>DCRT4 (1108-1130)</b>
	)	
Defendant.	)	REPORTED BY: Christine Rhodes
	)	Tucker & Associates

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This having been the time heretofore set for **motion hearing** in the above-entitled matters, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present and represented by Mr. Lary Sisson.

The Court called the case and noted this matter was set for hearing on a motion filed by the defendant requesting permission to withdraw his pleas of guilty taken before Judge Morfitt on the 14<sup>th</sup> day of February, 2012. Further, there was an affidavit of the defendant filed this morning which the Court had reviewed along with the motion.

Mr. Sisson presented argument in support of the motion.

Ms. Kallin objected and presented argument.

The Court indicated that one of the main reasons not to consider granting this request was to make it unnecessary for the victims of the crime to relive the trauma of sexual abuse by their father. However, the Court was looking at a minimum of fifteen (15) years in the state penitentiary and a probable request for indeterminate life recommendation from the State so the penalty was significant.

The Court believed it was a little premature on making a decision on the motion as the affidavit had just been filed this morning and the State had not had the opportunity to address the supposed conversation between the defendant and his wife. Second, the Court noted the children were fourteen (14) and seventeen (17) years of age which would not cause the same level of trauma a younger child might experience by having to testify. The Court was willing to take this case and try it the first week of May.

The Court advised Mr. Sisson that in the event the motion was granted and the defendant was allowed to withdraw his plea, if convicted of the charges, the Court did not believe it would be considering the mandatory minimum sentence of fifteen (15) years. The sentence would be something much more significant as the Court would find it very offensive that if evidence proved beyond a reasonable doubt that the defendant was guilty of the offenses, that the defendant would put his children through a trial.

Having said that, the Court presumed the defendant was innocent, or would if it granted the motion.

In answer to the Court's inquiry, Ms. Kallin indicated the defendant had declined the psychosexual evaluation.

Mr. Sisson agreed.

In answer to the Court's inquiry, Ms. Kallin believed her portion of the hearing would take approximately 30 minutes. She believed the girls were writing victim impact statements and she believed Mrs. Anderson would be making a statement.

Mr. Sisson would not be presenting any testimony at sentencing.

The Court advised counsel the current date set for sentencing, the 16<sup>th</sup>, was very full, therefore, **the Court continued this motion until the date and time of the original sentencing date, April 16, 2012 at 2:30 p.m., and continued the sentencing until the 30<sup>th</sup> day of April, 2012 at 2:45 p.m. before this Court.**

The State was instructed to respond to some of the specific claims made in the defendant's affidavit, the Court believed it might be helpful to know the other side of the story.

Mr. Sisson inquired whether the Court wanted a copy of the audio conversation mentioned in the affidavit if it still existed.

If the sole basis for this motion was the undue influence of the defendant's wife, that recording might be helpful to the Court.


The Court advised the parties if the motion was granted, it would be setting the jury trial for the first or second week of May.

Ms. Kallin indicated the second week worked better with her schedule.

The Court indicated it would address that issue next week at 2:30 p.m.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceedings or posting of bond.

---

  
Deputy Clerk



MARK J. MIMURA  
CANYON COUNTY PUBLIC DEFENDER

LARY G. Sisson  
510 Arthur Street  
Caldwell, Idaho 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

*Attorneys for Defendant*

FILED  
A.M. P.M.

APR 09 2012

CANYON COUNTY CLERK  
K GORDILLO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff,

vs.

WAYNE D. ANDERSON,

Defendant.

Case No. CR-2011-31445-C  
CR-2011-21657-C

**AFFIDAVIT OF DEFENDANT IN  
SUPPORT OF MOTION TO WITHDRAW  
GUILTY PLEA**

STATE OF IDAHO )  
 )  
County of Canyon )  
ss.

I, WAYNE D. ANDERSON, being first duly sworn, upon oath, deposes and says:

1. I am making this affidavit based upon my personal knowledge, memory and/or belief.
2. I am the defendant in these matters.
3. I have been married to my wife, Cassie Anderson, for approximately 20 years.
4. Together we are the parents of <sup>four</sup> ~~three~~ children – two of which are complaining witnesses against me in these matters.

5. My relationship with my wife is such that:
- A. I love her very much;
  - B. Because of our relationship, her opinion of me is of supreme importance to me;
  - C. She is one of the few persons who can influence what I do and say and my decision-making processes; and
  - D. Therefore, I will do almost anything in order to fulfill the wishes of my wife.
6. On February 13, 2012, I had a video/phone conversation with my wife about my jury trial that was scheduled to begin the following day.
7. Although I cannot remember verbatim our entire conversation, we did discuss my insistence to exercise my right to a jury trial and my refusal to plead guilty to any crimes relating to my two children.
7. During that conversation I tried to explain to my wife that I was “fighting for my life.”
8. In response, my wife told me to “stop trying to save my life” and that I was harming our children. She also made it absolutely clear that she wanted me to plead guilty.
9. As a result of hearing my wife tell me that she did not want me to live anymore, I was completely devastated mentally and emotionally. Much like when I first found out my children were making false accusations against me, I felt as if I had no reason to continuing living. At that point I did not care what happened to me.

10. Consequently, I decided that I was going to plead guilty so I could fulfill my wife's wishes and die in prison.
11. The next day I filled out a Guilty Plea Advisory form and entered what I am told is an "Alford" guilty plea in front of a District Judge.
12. At the time of entering my plea, I was still distraught about what my wife had told me the day before. As a result, I merely answered the questions presented to me by the judge in a way that I thought would expedite the judge taking my plea. I was not focusing on giving the judge truthful answers.
13. Approximately one (1) week after pleading guilty, I began to truly reflect upon and understand what I had done. It was then that I realized that I had acted in haste, and while under the influence of the pain and grief caused by what my wife had said to me.
14. As I understood that my guilty plea was not freely and voluntarily made, I was not sure what I should do.
15. Eventually, on or about March 1, 2012, I left a message for my assigned attorney to visit me because I wanted to withdraw my guilty pleas in these matters. My attorney eventually visited me and it is my belief that he has filed a motion to withdraw my guilty pleas on my behalf.
16. In addition, I want to the court to be aware that I know very well the personalities and character traits of both of my daughters who are also my accusers.

Consequently, I know that:


- A. They can be significantly influenced – just like I was – by their mother;  
and,

B. If my daughters are placed in a situation where they must truthfully either confirm or deny the allegations they have made against me, then their statements will exonerate me in these matters.

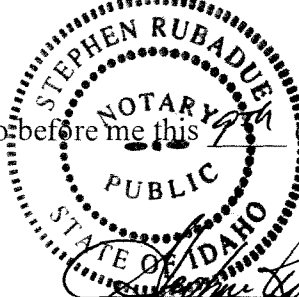
17. Because I have maintained that I am not guilty of the crimes alleged against me during the prosecution of my cases, I know that my daughters will eventually confirm that I am not guilty, and that my previous guilty pleas were not knowingly and voluntarily made, I am simply asking that the Court allow me to withdraw my guilty pleas and to allow these cases to naturally unfold.

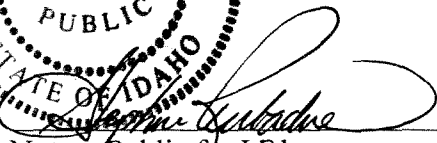
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 9<sup>th</sup> day of April, 2012.

  
WAYNE D. ANDERSON

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of April, 2012.



  
Notary Public for Idaho

Residing at Nampa, ID

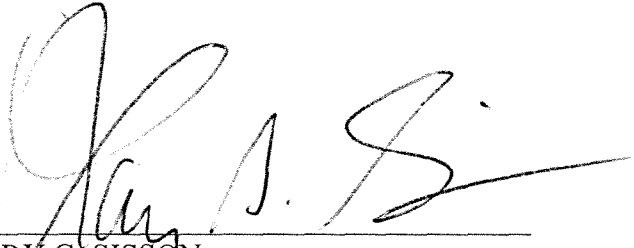
Commission Expires 3/14/2017

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of April, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

☒ By hand delivering copies of the same to the offices of the attorney(s) indicated below.

Canyon County Prosecutor's Office  
1115 Albany Street  
Caldwell, Idaho 83605

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **APRIL 16, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR2011-21657-C
	)	CR2011-31445-C
	)	
vs.	)	TIME: 2:30 P.M.
	)	
WAYNE ANDERSON,	)	<b>DCRT4 (251-306)</b>
	)	
Defendant.	)	REPORTED BY: Kim Saunders
	)	

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This having been the time heretofore set for **motion hearing** in the above-entitled matters, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present and represented by Mr. Lary Sisson.

The Court called the case and reviewed prior proceedings. Since the last hearing, the Court indicated it had reviewed the video recording between the defendant and his wife during a jail visit and noted this was the defendant's basis for his motion to withdraw his pleas.

In answer to the Court's inquiry, Mr. Sisson indicated he had reviewed the video, without the defendant's presence, and presented further argument in support of the motion.

Ms. Kallin presented additional argument in objection to the motion.

Mr. Sisson presented further argument.

The Court reviewed the charges to which the defendant had pled and took this matter under advisement. The Court indicated it would be issuing a written decision by 5:00 p.m. of Wednesday of this week and the sentencing date would remain as set. If the motion was denied, this matter would be proceeding as set, if granted the Court indicated it would probably have a telephonic conference with counsel to set a mutually agreeable date for trial.

The Court inquired whether the parties would stipulate to the marking and admitting of the video recordings as evidence for the motion hearing.

Ms. Kallin and Mr. Sisson so stipulated.

The defendant was remanded into the custody of the Canyon County Sheriff pending further proceedings or posting of bond.

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\_\_\_\_\_  
Deputy Clerk

F I L E D  
A.M. P.M.

APR 18 2012

CANYON COUNTY CLERK  
C ATKINSON, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,	)	CASE NO: CR 2011-21657C
	)	CASE NO: CR 2011-31445C ✓
	)	
Plaintiff,	)	<b>MEMORANDUM DECISION</b>
	)	<b>UPON DEFENDANT'S MOTION</b>
	)	<b>TO WITHDRAW GUILTY PLEA</b>
	)	
-VS-	)	
	)	
WAYNE ANDERSON,	)	
	)	
Defendant.	)	

THIS MATTER CAME BEFORE THE COURT on April 9, 2012, and again on April 16, 2012 for oral argument on Defendant's motion to withdraw his guilty plea which was accepted by Judge James C. Morfitt on February 14, 2012. The Defendant was represented by his attorney of record Mr. Lary Sisson. The State was represented by Ms. Erica M. Kallin, Canyon County Deputy Prosecuting Attorney.

MEMORANDUM DECISION UPON DEFENDANT'S  
MOTION TO WITHDRAW GUILTY PLEA

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In these consolidated cases, the Defendant was charged with two counts of sexual abuse of a minor under sixteen, in violation of I.C. § 15-1506 and one count of lewd conduct with a minor under sixteen, in violation of I.C. § 15-1508. Pursuant to a plea bargain agreement, the State agreed to dismiss the two counts of sexual abuse of a minor under sixteen in return for the Defendant's plea of guilty to the one count of lewd conduct with a minor under sixteen along with admitting that he was previously convicted with another lewd conduct with a minor offense. Further, the State agreed not to file a new charge against the Defendant for intimidating a witness.

The grounds for his motion to withdraw include the Defendant's claim that the day prior to his guilty plea, his wife visited him at the jail and "unduly, and perhaps unlawfully", persuaded him to plead guilty. As a result, the Defendant now argues that his plea was not given freely and voluntarily. Furthermore, the Defendant points out that he has always maintained his innocence in this case.

"Anxiety and pressure from the defendant's family situation do not constitute impermissible coercion." *State v. Hanslovan*, 147 Idaho 530, 537-38, 211 P.3d 775, 782-83 (Ct.App.2008), citing *State v. Spry*, 127 Idaho 107, 111, 897 P.2d, 1002, 1006 (Ct.App. 1995); *State v. Wilson*, 126 Idaho 926, 928, 894 P.2d 159, 161 (Ct.App.1995).

Additionally, "a mere assertion of innocence, by itself, is not grounds to withdraw a guilty plea." *Hanslovan*, 147 Idaho at 537, citing *State v. Rodriguez*, 118 Idaho 957, 960, 801 P.2d 1308, 1311 (Ct.Ap.1990).

Our Supreme Court in *State v. Ballard*, said:

I.C.R. 33(c) is the same as Federal Rule 32(d), and thus federal case law is relevant to the resolution of this case . . . the federal cases are clear that: (1) presentence withdrawal of a guilty plea is not an automatic right, *United States v. Barker*, 514 F.2d 208, 221 (D.C.Cir.1975); *Goo v. United States*, 187 F.2d 62 (9th Cir.1951); (2) the defendant has the burden of proving that the plea should be withdrawn, *Everett v. United States*, 336 F.2d 979, 984 (D.C.Cir.1964); (3) the standard of review in these cases is an "abuse of discretion" standard, *United States v. Rasmussen*, 642 F.2d 165, 167 (5th Cir.1981); *United States v. Barker*, *supra* at

220; *Dorton v. United States*, 447 F.2d 401 (10th Cir.1971); *Everett v. United States*, *supra* at 982; (4) prejudice to the state is not a necessary finding for rejection of a motion to withdraw plea, *United States v. Rasmussen*, *supra* at 168; however, a showing of prejudice may be sufficient to support a denial; (5) the fact that the withdrawal of a guilty plea would substantially inconvenience the trial court is a proper factor for consideration on motion to withdraw a guilty plea, *United States v. Barker*, *supra* at 222.

*State v. Ballard*, 114 Idaho 799, 801, 761 P.2d 1151, 1153 (1988).

As a preliminary inquiry, the Court should look at the validity of the guilty plea. In doing so, the Court must determine if the plea was voluntarily, knowingly, and intelligently given.

On February 14, 2012, Judge James C. Morfitt took the guilty plea pursuant to the above-referenced plea agreement. The acceptance of the guilty plea was predicated upon a requirement that the Defendant and his legal counsel review and complete the guilty plea advisory form pursuant to Idaho Criminal Rule 11 (e). The record reflects that Judge Morfitt questioned the Defendant about his review and completion of the advisory form and the Defendant disclosed that he had read the document and discussed it with his attorney. Further, his initials affixed thereto indicated that he understood the rights that he was waiving upon entry of a plea of guilty, including his right to a jury trial and his right to confront his accusers. It is clear from the record that Judge Morfitt questioned the Defendant about his understanding that a guilty plea would subject him to a mandatory minimum fifteen (15) year sentence which would be required to be imposed and that the maximum sentence carried up to life in the state penitentiary and a \$50,000.00 fine, or both. The record is clear that the Defendant stated that he understood this as a consequence to his plea of guilty.

At the change of plea hearing, the Defendant indicated that his plea would be in the form of an "Alford" plea. Judge Morfitt specifically informed the Defendant that upon entry of an "Alford" plea the Defendant was waiving his right to a jury trial and his

MEMORANDUM DECISION UPON DEFENDANT'S  
MOTION TO WITHDRAW GUILTY PLEA

right to confront his accusers, including his right to cross examine any witnesses who might testify against him at trial. The Defendant was further questioned whether anyone made any promises to him, or made any threats against him, or coerced or used any inducements to cause him to enter his plea of guilty. The defendant clearly responded that there had been no such coercion, threats or promises.

The record reflects that Judge Morfitt explained to the Defendant what is meant by an "Alford" plea and the Defendant stated that he understood Judge Morfitt's explanation. Judge Morfitt further explained to the Defendant that it would be highly unlikely that the Court would thereafter allow the Defendant to withdraw his plea of guilty and the Defendant stated that he understood.

It is the defendant's burden to show the Court that it would be unjust to deny his request to withdraw his plea. *Ballard*, 114 Idaho at 801. Here, Defendant's motion to withdraw the plea of guilty is based almost entirely upon his claim that he was coerced by his wife during her visit with him at the Canyon County jail on the day preceding his entry of plea. That visit was recorded by the State and admitted as an exhibit by stipulation of the parties. The Defendant argued that the recording supported his motion, while the State argued that the recording supported a denial of the motion.

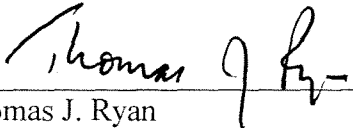
The Court reviewed the recording and found that it was approximately thirty (30) minutes in duration. During the conversation between the Defendant and his wife, he continually emphasized that he felt the State was being unfair in insisting that he plead guilty to Part 2 of the Information which would require a mandatory minimum penitentiary sentence of fifteen (15) years. Defendant's wife told him that he had a choice to not further victimize his daughters and allow his son to see that he is a man willing to be held accountable for his actions by entering a guilty plea. She pleaded with the Defendant to not hurt the family anymore and to put his life in the hands of God and stop fighting. The Defendant's response was to state that he did not want to take his daughters to court, but that he wanted "to hope for less than fifteen (15) years".

As stated by the Idaho Supreme Court in *State v. Hanslovan*, anxiety and pressure from the defendant's family (here Defendant's wife) does not constitute impermissible

coercion. It is this Court's conclusion that the Defendant was not unduly or unlawfully coerced into pleading guilty by his wife. Finally, an assertion of innocence, by itself, is not grounds to withdraw a guilty plea.

For the foregoing reasons, the Court finds that the Defendant's motion to withdraw his guilty plea is properly **DENIED**.

DATED: 4/18/12

  
\_\_\_\_\_  
Thomas J. Ryan  
District Judge

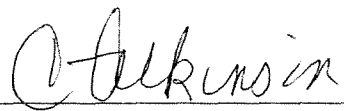
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was mailed, hand delivered or sent via facsimile transmission to the following persons on this 18 day of April, 2012.

**Erica M. Kallin**  
DEPUTY PROSECUTING ATTORNEY, CANYON COUNTY  
1115 Albany  
Caldwell, ID 83605

**Lary Sisson**  
Mark J. Mimura  
Canyon County Public Defender  
510 Arthur Street  
Caldwell, ID 83605

Chris Yamamoto  
Clerk of the District Court

By:   
\_\_\_\_\_  
Deputy Clerk

MEMORANDUM DECISION UPON DEFENDANT'S  
MOTION TO WITHDRAW GUILTY PLEA



ORIGINAL

**MARK J. MIMURA**  
**CANYON COUNTY PUBLIC DEFENDER**

LARY G. Sisson  
510 Arthur Street  
Caldwell, Idaho 83065  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

**FILED**  
A.M. P.M.

**APR 27 2012**

**CANYON COUNTY CLERK**  
**K GORDILLO, DEPUTY**

*Attorneys for Defendant*

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff,

vs.

WAYNE ANDERSON,

Defendant.

Case No. CR-2012-21657-C

~~CR-2011-31455-C~~ 31445

**NOTICE TO COURT REGARDING  
DEFENDANT'S PRE-SENTENCE  
INVESTIGATION REPORT**

COMES NOW Defendant, by and through his attorneys of record, the Canyon County Public Defender's Office, and hereby notifies this Honorable Court that a Presentence Investigation Report has not been completed for these matters. However, Defendant desires to have a Pre-sentence Investigation Report completed. Consequently, Defendant requests the following:

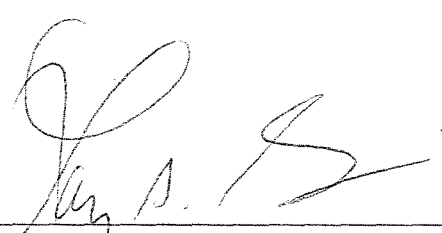
1. That his Sentencing Hearing be vacated and reset for a time convenient for the Court and Plaintiff;
2. That another Order be issued to 3<sup>rd</sup> District Probation and Parole to conduct a pre-sentence investigation and summarize that investigation into

a report; and

3. That Defendant be given another Pre-Sentence Questionnaire to fill out and provide the pre-sentence investigator.

It is still Defendant's desire **not** to participate in and receive a psychosexual evaluation.

DATED this 27<sup>th</sup> day of April, 2012.

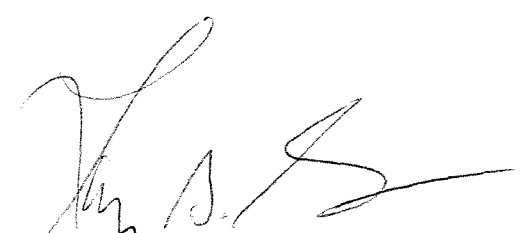
  
\_\_\_\_\_  
LARRY G. SISSON  
Attorney for Defendant

#### CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of April, 2012, I served a true and correct copy of the within and foregoing *Notice to Court* upon the individual(s) named below in the manner noted:

- ☒ By depositing copies of the same in the designated courthouse box.

Bryan F. Taylor  
Canyon County Prosecuting Attorney  
Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83605

  
\_\_\_\_\_  
LARRY G. SISSON  
Attorney for Defendant

THIRD JUDICIAL DISTRICT, STATE OF IDAHO  
COUNTY OF CANYON  
CONTINUED HEARING

STATE OF IDAHO

-vs-

WAYNE D. ANDERSON,

Defendant.

☐ True Name

Corrected Name:

) Case No. **CR2011-31445-C**  
) **CR2011-21657-C**

) Date: April 30, 2012 / 2:45 p.m.

) Judge: Thomas J. Ryan

) Reported By: Kim Saunders

) Recording: DCRT4 (315-317)

) Hearing: sentencing

**APPEARANCES:**

☒ Defendant

☒ Prosecutor – Erica Kallin

☒ Defendant's Attorney – Lary Sisson

☐ Interpreter -

☐ Other -

**PROCEEDINGS:** This matter shall be

☒ continued to the 15<sup>th</sup> day of June, 2012 at 1:30 p.m. before Judge Ryan

☐ per stipulation of counsel    ☐ at the request of    ☐ State    ☐ Defendant/Counsel

☒ to allow for completion of the Presentence Investigation Report.

**BAIL:** The Defendant was

☐ released on own recognizance (O.R.).

☒ remanded to custody of the sheriff.

☐ Bail set \$\_\_\_\_\_

☐ released to pre-trial release officer.

☐ released on bond previously posted.

**OTHER:**\_\_\_\_\_.

\_\_\_\_\_, Deputy Clerk

CT

**MARK J. MIMURA**  
**CANYON COUNTY PUBLIC DEFENDER**

Lary G. Sisson  
510 Arthur Street  
Caldwell, Idaho 83605  
Phone: (208) 639-4585  
Fax: (208) 639-4611  
Idaho State Bar No. 6072

**FILED** **3:25**  
A.M. P.M.

**JUL 12 2012**

**CANYON COUNTY CLERK**  
**K GORDILLO, DEPUTY**

*Attorneys for Defendant*

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE**  
**STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

THE STATE OF IDAHO,

Plaintiff

vs.

WAYNE D. ANDERSON, II,

Defendant.

CASE NO. CR-2011-21657-C

**CR-2011-31445-C**

**MOTION TO RECONSIDER**  
**ORDER DENYING**  
**WITHDRAWAL OF GUILTY**  
**PLEA**

COMES NOW, the above-named Defendant, WAYNE D. ANDERSON, II, by and through his attorney of record, the Canyon County Public Defender's Office, and hereby moves this Honorable Court to Reconsider its Order to Denying Defendant's Motion to Withdraw Guilty Plea. In support of this motion, the defendant states the following:

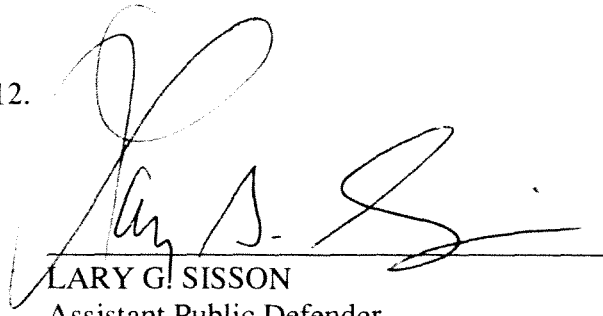
1. Defendant avers that he was severely depressed after talking to his wife on February 13, 2012. This statement is supported by sections 9 and 10 of the Affidavit of Defendant in Support of Motion to Withdraw Guilty Plea filed previously in these matters.



2. Defendant avers that he was still depressed when he entered an "Alford Plea" on February 14, 2012. This statement is supported by Section 12 of the Affidavit of Defendant in Support of Motion to Withdraw Guilty Plea filed previously in these matters.
3. The Court did not adequately question Defendant about his mental and emotional state when he entered his guilty plea.
4. Because Defendant was under undue mental duress and severe depression, his guilty plea was not freely, knowingly and/or voluntarily made.
5. Defendant desires to exercise his constitutional right to a trial by jury, which includes his right to confront his accusers.
6. Defendant continues to maintain his innocence as to the charges against him.
7. Defendant reserves the right to supplement the record with evidence, testimony, legal argument, etc. in order to support his request to withdraw his guilty pleas.
8. The State will not be prejudiced if Defendant is allowed to withdraw his guilty plea.

WHEREFORE, the defendant respectfully requests the Court to rescind its previous Order and allow Defendant to withdraw his plea of guilty and set this matter for Jury Trial.

DATED, this 12<sup>th</sup> day of July, 2012.

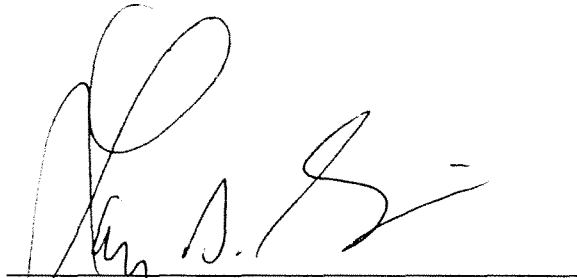
  
LARRY G. SISSON  
Assistant Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12<sup>th</sup> day of July, 2012, I served a true and correct copy of the within and foregoing document upon the individual(s) named below in the manner noted:

☒ By delivering copies of the same to the courthouse box of the attorney(s) indicated below.

Canyon County Prosecutor's Office  
1115 Albany Street  
Caldwell, Idaho 83605

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PRESIDING: **THOMAS J. RYAN** DATE: **JULY 16, 2012**

THE STATE OF IDAHO,	)	COURT MINUTE
	)	
Plaintiff,	)	CASE NO: CR2011-31445-C
	)	CR2011-21657-C
	)	
vs.	)	TIME: 11:00 A.M.
	)	
WAYNE ANDERSON,	)	<b>DCRT4 (1100-1143)</b>
	)	
Defendant.	)	REPORTED BY: Kim Saunders
	)	

---

This having been the time heretofore set for **sentencing and motion hearing** in the above-entitled matters, the State was represented by Ms. Erica Kallin, Deputy Prosecuting Attorney for Canyon County, Idaho; and the defendant was present in court and represented by Mr. Lary Sisson.

The Court called the cases and noted the defendant had pled to **Sexual Abuse of a Child Under Sixteen**. Further, a motion had been filed on the 2<sup>nd</sup> day of July, 2012 by the defense requesting the Court reconsider its order denying the motion for withdrawal of the guilty plea. The Court inquired of defense counsel as to why the new motion should be considered and what was different from the prior motion.

Ms. Kallin requested the Court clarify the charge to which the defendant had pled. She believed the defendant had pled guilty to **Lewd Conduct**.

The Court reviewed the minute from February 14, 2012 and determined the defendant had pled to **Count I, Lewd Conduct With a Minor Under Sixteen** and the **State would be dismissing Count II and CR2011-21657-C.**

Mr. Sisson presented argument in support of the motion.

Ms. Kallin objected and presented argument.

Mr. Sisson presented further argument.

The defendant made statements to the Court on his own behalf.

In answer to the Court's inquiry, Ms. Kallin indicated the State was prepared to proceed to sentencing today.

The Court indicated the analysis set forth in its memorandum decision was just as applicable today as then and denied the defense's motion to reconsider.

The Court determined all parties had received / reviewed the Presentence Investigation Report.

Mr. Sisson advised the Court the defendant had prepared to proceed to sentencing in the event the Court denied the motion.

The Court noted the record already reflected that the defendant disagreed with the presentence investigator's claim that the defendant made statements such as he intended to screw with everyone and keep wasting time.

Further factual corrections to the Presentence Investigation Report were stated for the record.

Ms. Kallin advised the Court the victims' mother was present and the victims' had not prepared a statement as they just wanted to put this issue behind them. She further advised the victims' mother would stand on her statement in the Presentence Investigation Report.

Ms. Kallin made statements about the defendant and the case and requested the Court impose the mandatory minimum sentence of fifteen (15) years, as required, and presented argument in support of an indeterminate life sentence. She requested a No Contact Order with the victims, that the defendant submit a DNA sample and right thumbprint, that a \$5,000.00 civil penalty be awarded and presented argument.

Mr. Sisson made statements in support of the defendant. He recommended an indeterminate sentence of five (5) years for a sentence of fifteen (15) years fixed followed by five (5) years indeterminate for a total twenty (20) year sentence.

The defendant made no further statements to the Court on his own behalf.

The Court made statements to the defendant and noted that at this point, the defendant was indicating he was not guilty and that he was being prevented from his right to confront his accusers. The Court indicated the defendant was given all of those rights and had plenty of time to consider his decision. Further, Judge Morfitt had taken the change of plea and was probably the most thorough District Judge to review a guilty plea with an individual. The Court indicated it was convinced in its own mind, beyond a reasonable doubt, that the defendant was guilty of the offenses.

The Court made further comments to the defendant, indicated the defendant was entitled to credit for three hundred thirty-eight (338) days, and found him to be guilty of the offense of **Lewd Conduct With a Minor Under Sixteen**, a felony, and sentenced him to a **minimum determinate period of fifteen (15) years and a subsequent indeterminate period of custody not to exceed three (3) years for a total unified sentence of no more than a total of forty (40) years.**

The defendant was ordered to pay a civil penalty in the amount of \$5,000.00 to the family of the victim. The defendant was ordered to pay applicable court costs. The defendant was ordered to submit a DNA sample and right thumbprint impression. The defendant was ordered to have No Contact with the victims, Celeste and Dawn.

In answer to the Court's inquiry, Ms. Kallin requested the No Contact Order be for the entire term of the sentence, forty (40) years and that it not apply to any other person(s).

In answer to the State's inquiry, the Court ordered the defendant to reimburse the County for the Public Defender in the amount of \$350.00.

Ms. Kallin provided the Court with orders to dismiss **count II and CR2011-24657-C.**

In answer to the Court's inquiry, neither counsel had anything further for the Court to address.

The Court provided the defendant with a notice of his rights on sentencing, which the defendant reviewed, signed, and returned to the Court.

Both of counsel returned their copies of the Presentence Investigation Report to the Court.

The defendant was remanded into the custody of the Canyon County Sheriff pending transfer to the Idaho Department of Correction.

---

  
\_\_\_\_\_  
Deputy Clerk

THIRD JUDICIAL DISTRICT  
STATE OF IDAHO  
COUNTY OF CANYON

FILED 7-16-12 AT 1143 A.M.  
CLERK OF THE DISTRICT COURT  
BY D. Joyner, Deputy

THE STATE OF IDAHO, or

Plaintiff,

-vs-

Wayne D. Anderson, II.  
Defendant.

Case No. CR11-31445c

COMMITMENT

Charge: Low Conduct with  
a child Under 16

IT IS HEREBY ORDERED that the above-named Defendant, having been found guilty as charged, be committed to the custody of the Sheriff of Canyon County, Idaho and that this Order of Commitment shall serve as authority for continued custody.

IT IS FURTHER ORDERED that the above-named Defendant shall serve:

- ☐ \_\_\_\_\_ day(s).    ☐ \_\_\_\_\_ month(s).    ☐ \_\_\_\_\_ year(s).  
☐ as previously Ordered on the Judgment dated \_\_\_\_\_.  
☐ credit for \_\_\_\_\_ day(s) served.  
☒ determinate 15 yrs.    ☒ indeterminate ~~15~~ 25 yrs.    ☐ retained jurisdiction.  
☐ work search/work-out privileges granted from \_\_\_\_\_ to \_\_\_\_\_.

☐ upon written verification.    ☐ as authorized by the Sheriff of Canyon County.

☐ Sheriff's Work Detail: \_\_\_\_\_ days in lieu of \_\_\_\_\_ days jail to be completed by \_\_\_\_\_. If the

Defendant fails to report to the jail as ordered or at a time agreed upon with the jail, or fails to satisfactorily perform the Defendant's obligations with the Sheriff Inmate Labor Detail, then the Sheriff is ordered and directed to place the Defendant in custody to serve the Defendant's jail time that has not been suspended.

☒ Other: Count II & CR11-21657 are dismissed

IT IS FURTHER ORDERED that the above-named Defendant shall report to the Canyon County Sheriff on or before \_\_\_\_\_.

Dated: 7-16-12

Signed: Thomas J. Joyner  
Judge

☒ Jail    ☐ Defendant

COMMITMENT

000113

3/02



FILED  
A.M. 11:12 P.M.

JUL 16 2012

CANYON COUNTY CLERK  
D TORGERSEN, DEPUTY

bm

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO

Plaintiff,

vs.

WAYNE D ANDERSON II,

Defendant.

CASE NO. CR2011-31445

**ORDER TO DISMISS  
COUNT II**

Pursuant to State's Motion and good cause existing therefore, IT IS HEREBY ORDERED  
that Count II in the above entitled matter be dismissed.

DATED This 16<sup>th</sup> day of July, 2012.

  
THOMAS J. RYAN, District Judge

ORDER

000114

ORIGINAL

THIRD JUDICIAL DISTRICT  
STATE OF IDAHO  
COUNTY OF CANYON

FILED 7.18.12 AT 1153A.M.  
CLERK OF THE DISTRICT COURT  
BY D. [Signature], Deputy

\_\_\_\_\_  
THE STATE OF IDAHO, or

\_\_\_\_\_  
Plaintiff,

-vs-

Wayne D. Anderson, II  
Defendant.

Case No. CR11-31445C

ORDER RESCINDING NO CONTACT  
ORDER

IT IS HEREBY ORDERED that the No Contact Order entered in this case on the 11th day of  
December, 2011 is rescinded.

Dated: 7/18/12

Signed: Thomas J. [Signature]  
Judge

☐ Defendant

☒ Dispatch

ORDER RESCINDING NO CONTACT ORDER

000115

9/02

TRANSMISSION VERIFICATION REPORT

TIME : 07/18/2012 11:45

DATE, TIME	07/18 11:44
FAX NO./NAME	94534835
DURATION	00:00:43
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

FILED  
A.M. 7:10 P.M.

JUL 19 2012

CANYON COUNTY CLERK  
D TORGERSEN, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON

THE STATE OF IDAHO,

Plaintiff,

vs.

WAYNE ANDERSON,  
aka WAYNE D. ANDERSON, II,  
SS# [REDACTED]  
D.O.B. [REDACTED]

Defendant.

JUDGMENT AND COMMITMENT

CASE NO. CR2011-31445-C

On this 16<sup>th</sup> day of July, 2012, personally appeared Erica Kallin, Deputy Prosecuting Attorney for the County of Canyon, State of Idaho, and the defendant, Wayne Anderson, and the defendant's attorney, Lary Sisson.

**IT IS ADJUDGED** that defendant has been convicted upon the defendant's plea of guilty to the offense of **Lewd Conduct With a Minor Under Sixteen**, a felony, as charged in **Part I, Count I of the Indictment**, a violation of Idaho Code Section 18-1508, being committed on or between the 7<sup>th</sup> day of August, 2007 and the 7<sup>th</sup> day of August, 2010; that the defendant has been convicted upon the defendant's plea of guilty to the **Mandatory Minimum Sentencing enhancement**, as charged in **Part II, Count I of the Indictment**, being committed on the 24<sup>th</sup> day of September, 1998; and the Court having asked the defendant whether there was any legal cause to show why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

**IT IS ADJUDGED** that the defendant is guilty as charged and convicted.

**IT IS HEREBY FURTHER ADJUDGED** that the defendant be sentenced to the custody of the Idaho State Board of Correction for a minimum period of confinement of

fifteen (15) years and a subsequent indeterminate period of confinement not to exceed twenty-five (25) years, for a total unified sentence of forty (40) years.

**IT IS FURTHER ORDERED** that the defendant be given credit for three hundred thirty-eight (338) days of incarceration prior the entry of judgment for this offense, pursuant to Idaho Code Section 18-309.

**IT IS FURTHER ORDERED** that the defendant shall pay court costs in the amount of \$300.50, reimburse the Public Defender's office in the amount of \$350.00, and a civil fine, which shall operate as a civil judgment against the defendant and in favor of the victims' family pursuant to I.C. § 19-5307, in the amount of \$5,000.00.

**IT IS FURTHER ORDERED** that the defendant shall register as a sex offender in compliance with the Idaho Sexual Offender Registration and Community Right-to-Know Act, [I.C. § 18-8301 *et seq.*].

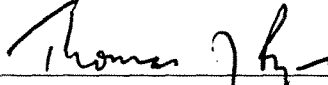
**IT IS FURTHER ORDERED** that the defendant shall submit a DNA sample in compliance with the Idaho DNA and Genetic Marker Database Act of 1976. [I.C. § 19-2201 *et seq.*].

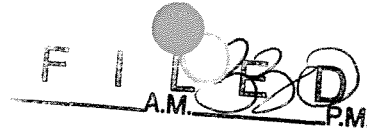
**IT IS FURTHER ORDERED** that the defendant shall have No Contact, direct or indirect, with D.A. (D.O.B. 08/07/94) and C.A. (D.O.B. 01/09/98), the victims in this matter. This No Contact order shall expire at 11:59 p.m. on the 16<sup>th</sup> day of July, 2052.

**IT IS ADJUDGED** that the defendant be committed to the custody of the Sheriff of Canyon County, Idaho, for delivery forthwith to the Director of the Idaho State Board of Correction at the Idaho State Penitentiary or other facility within the State designated by the State Board of Correction.

**IT IS ORDERED** that the clerk deliver a certified copy of this Judgment and Commitment to the Director of the Idaho State Board of Correction or other qualified officer and that the copy serve as the commitment of the defendant.

DATED this 18<sup>th</sup> day of July, 2012.

  
\_\_\_\_\_  
Thomas J. Ryan  
District Judge



**MARK J. MIMURA**  
**CANYON COUNTY PUBLIC DEFENDER**

**JUL 31 2012**  
**CANYON COUNTY CLERK**  
**M BUSH, DEPUTY**

LARY G. SISSON  
510 Arthur Street  
Caldwell, Idaho 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

*Attorneys for Defendant*

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

WAYNE D. ANDERSON, II,

Defendant/Appellant.

Case No. CR-2011-31445-C

**NOTICE OF APPEAL**

**TO:** THE ABOVE NAMED RESPONDENT, THE STATE OF IDAHO, AND THE  
CLERK OF THE ABOVE-ENTITLED COURT.

**NOTICE IS HEREBY GIVEN THAT:**

1. The above named Appellant, WAYNE D. ANDERSON, II, appeals  
against the above-named Respondent to the Idaho Supreme Court from the following:

A. The Judgment of Conviction and Commitment that was filed in this  
matter on or about July 19, 2012.

2. These matters were heard, and the Judgments were entered, in the Third  
Judicial District, in and for the County of Canyon by District Court Judge Thomas J. Ryan.

3. A preliminary statement of the issues on appeal which the appellant intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal or amending issues listed below.

A. Whether the Court abused its discretion and denied Defendant's Motion to Withdraw Guilty Plea in this matter?

B. Whether the Court further abused its discretion by failing to reconsider its earlier decision of denying Defendant's Motion to Withdraw Guilty Plea?

C. Whether the Court abused its discretion by giving Defendant an indeterminate portion of twenty-five (25) years for his sentence in this matter.

4. Appellant has the right to appeal all final judgments of convictions in criminal proceedings pursuant to Rule 11(c)(1) of the Idaho Appellate Rules.

5. Appellant requests a transcript, in both hard copy and electronic form, of the following hearings in this matter:

A. The Change of Plea Hearing held on February 14, 2012;

B. The audio recording between Defendant and his wife which was provided to the Court by stipulation of the parties on or about April 9, 2012;

C. The hearing for the Motion to Withdraw Guilty Plea held on April 16, 2012;

D. The hearing for the Motion to Reconsider Order Denying Withdrawal of Guilty Plea held on July 16, 2012; and

E. The Sentencing Hearing held on April 30, 2012.

6. In addition to the standard clerk's record on appeal, the Appellant requests the following:

- A. A copy of the Pre-Sentence Investigation Report;
- B. A copy of the Affidavit of Defendant in Support of Motion to Withdraw Guilty Plea filed on or about April 9, 2012; and
- C. The Court's Memorandum Decision Upon Defendant's Motion To Withdraw Guilty Plea filed on or about April 18, 2012.

7. I certify:

A. That a copy of this notice of appeal has been served on each Reporter of whom a transcript has been requested as named below at the address set out below:

Kim Saunders  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605

Debra Kreidler  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, Idaho 83605

B. That the appellant is exempt from paying the estimated transcript fee because he is incarcerated with the Idaho Department of Corrections and he is indigent.


C. That the appellant is exempt from paying the estimated fee for the preparation of the clerk's record because he is incarcerated with the Federal Bureau of Prisons and he is indigent.

D. That appellant is exempt from paying the appellate filing fee because he is incarcerated with the Idaho Department of Corrections and he is indigent.



E. That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED this 30 day of July, 2012.

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of July, 2012, I served a true and correct copy of the within and foregoing *Notice of Appeal* upon the individual(s) named below in the manner noted:

☒ By hand delivering copies of the same to the office(s) of the person(s) indicated below.

Bryan F. Taylor  
Canyon County Prosecuting Attorney  
1115 Albany Street  
Caldwell, ID 83605  
Debra Kreidler, Court Reporter  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83644

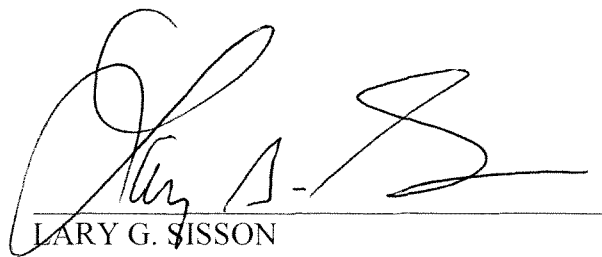
Kim Saunders, Court Reporter  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83644

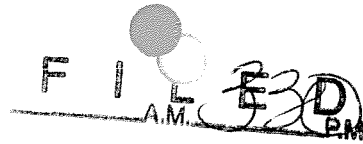
☒ By depositing copies of the same in the United States Mail, postage prepaid, first class, to the addresses of the person(s) indicated below.

Lawrence Wasden  
Idaho Attorney General  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0010

Wayne Anderson - #103343  
I.S.C.I. - Unit 14  
PO BOX 14  
Boise, ID 83707

State Appellate Public Defender  
3040 N. Lake Harbor, Ste 100  
Boise, ID 83703

  
LARRY G. SISSON  
Assistant Public Defender



**MARK J. MIMURA**  
**CANYON COUNTY PUBLIC DEFENDER**

LARY G. SISSON  
510 Arthur Street  
Caldwell, Idaho 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

**CANYON COUNTY CLERK**  
**M BUSH, DEPUTY**

*Attorneys for Defendant*

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

WAYNE D. ANDERSON, II,

Defendant/Appellant.

CASE NO. CR-2011-31445-C


**MOTION FOR APPOINTMENT OF  
STATE APPELLATE PUBLIC  
DEFENDER**

COMES NOW, WAYNE D. ANDERSON, II, by and through the his attorneys of record, the Canyon County Public Defender's Office, and hereby moves this Court for its order, pursuant to Idaho Code §19-867 et. seq., appointing the State Appellate Public Defender's Office to represent the Appellant in all further appellate proceedings and allowing current counsel for the defendant to withdraw as counsel of record for the purpose of appellate proceedings. This motion is brought on the grounds and for the reasons that:

1. The Appellant is currently represented by the Canyon County Public Defender;
2. The State Appellate Public Defender is authorized by statute to represent the defendant in all felony appellate proceedings; and

3. It is in the interest of justice for them to do so in this case since the defendant is indigent and any further proceedings on this case will be an appellate issue.

DATED this 30<sup>th</sup> day of July, 2012.



---

LARRY G. SISSON  
Assistant Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on the 30<sup>th</sup> day of July, 2012, I served a true and correct copy of the above and foregoing *Motion for Appointment of State Appellate Public Defender* upon the individual(s) named below in the manner noted:

☒ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.

Bryan F. Taylor  
Canyon County Prosecuting Attorney  
1115 Albany Street  
Caldwell, ID 83605  
Deborah Kreidler, Court Reporter  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83644

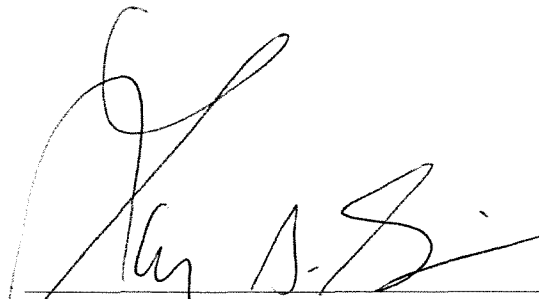
Kim Saunders, Court Reporter  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83644

☒ By depositing copies of the same in the United States Mail, postage prepaid, first class, or

Lawrence Wasden  
Idaho Attorney General  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0010

Idaho State Correctional Institution  
Wayne Anderson - #103343  
Unit 14  
P.O. Box 14  
Boise, ID 83707

State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83703

  
\_\_\_\_\_  
LARRY G. SISSON  
Assistant Public Defender



ORIC



**MARK J. MIMURA**  
**CANYON COUNTY PUBLIC DEFENDER**

LARY G. SISSON  
510 Arthur Street  
Caldwell, Idaho 83605  
Telephone: (208) 639-4610  
Facsimile: (208) 639-4611  
Idaho State Bar No. 6072

**CANYON COUNTY CLERK**  
**M BUSH, DEPUTY**

Attorneys for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,

Plaintiff/Respondent,

vs.

WAYNE D. ANDERSON, II,

Defendant/Appellant.

CASE NO. CR-2011-31445-C

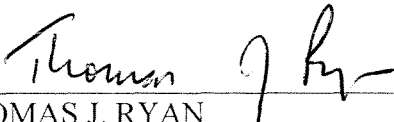
**ORDER APPOINTING STATE  
APPELLATE PUBLIC DEFENDER**

THIS MATTER having come before the Court pursuant to Defendant/Appellant's Motion for Appointment of State Appellate Public Defender; the Court having reviewed the pleadings on file and the motion, the Court being fully apprised in the matter and good cause appearing;

IT IS HEREBY ORDERED that the Canyon County Public Defender is withdrawn as counsel of record for the Defendant-Appellant and the State Appellate Public Defender is hereby appointed to represent the Defendant-Appellant, WAYNE D. ANDERSON, II, in the above entitled matters for appellate purposes.

The appointment of the State Appellate Public Defender is for purposes of the appeal only.

DATED this 13<sup>th</sup> day August, 2012.

  
\_\_\_\_\_  
THOMAS J. RYAN  
District Court Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on the 14 day of August, 2012, I served a true and correct copy of the foregoing upon the individual(s) named below in the manner noted:

☒ By hand delivering copies of the same to the office(s) of the attorney(s) indicated below.

Bryan F. Taylor  
Canyon County Prosecuting Attorney  
1115 Albany Street  
Caldwell, ID 83605

Kim Saunders, Court Reporter  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83644

Canyon County Public Defender  
510 Arthur Street  
Caldwell, ID 83605

Deborah Kreidler, Court Reporter  
c/o Canyon County Courthouse  
1115 Albany Street  
Caldwell, ID 83644

☒ By depositing copies of the same in the United States Mail, postage prepaid, first class, or

Lawrence Wasden  
Idaho Attorney General  
700 W. State Street  
P.O. Box 83720  
Boise, ID 83720-0010  
State Appellate Public Defender  
3647 Lake Harbor Lane  
Boise, ID 83703

Idaho State Correctional Institution  
Wayne Anderson - # 103343  
Unit 14  
P.O. Box 14  
Boise, ID 83707

**CHRIS YAMAMOTO**  
Clerk of the Court

By: M. Bush  
Deputy Clerk

000129



IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	
	)	
Plaintiff-	)	
Respondent,	)	Case No. CR-11-31445*C
	)	
-vs-	)	
	)	CERTIFICATE OF EXHIBITS
WAYNE ANDERSON,	)	
aka WAYNE D. ANDERSON, II,	)	
	)	
Defendant-	)	
Appellant.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify the following exhibit was used at the Motion Hearing held 4-16-12:

**Court's Exhibit:**

<b>1</b>	<b>Video</b>	<b>Admitted</b>	<b>Sent</b>
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The following is also being sent as exhibit as requested in the Notice of Appeal:

**Presentence Investigation Report**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 21 day of September, 2012.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.

By: K Waldemer Deputy

CERTIFICATE OF EXHIBITS

STATE OF IDAHO,  
  
Plaintiff-  
Respondent,  
  
-vs-  
  
WAYNE ANDERSON,  
aka WAYNE D. ANDERSON, II,  
  
Defendant-  
Appellant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal  
of the said Court at Caldwell, Idaho this 21 day of September, 2012.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho,  
in and for the County of Canyon.  
By: Chris Yamamoto Deputy

000131

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

STATE OF IDAHO,	)	
	)	
Plaintiff-	)	Supreme Court No. 40222-2012
Respondent,	)	
	)	CERTIFICATE OF SERVICE
-vs-	)	
	)	
WAYNE ANDERSON,	)	
aka WAYNE D. ANDERSON, II,	)	
	)	
Defendant-	)	
Appellant.	)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Record and one copy of the Reporter's Transcripts to the attorney of record to each party as follows:

Sara Thomas, State Appellate Public Defender's Office,  
3050 N. Lake Harbor Lane, Ste. 100, Boise, Idaho 83703

Lawrence G. Wasden, Attorney General, Statehouse, Boise, Idaho 83720

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal  
of the said Court at Caldwell, Idaho this 21 day of September, 2012.

CHRIS YAMAMOTO, Clerk of the District  
Court of the Third Judicial  
District of the State of Idaho  
in and for the County of Canyon.

By: H. Waldemer Deputy

CERTIFICATE OF SERVICE

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